

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenelle Slavin	Team: Team # 7	CCRB Case #: 200408532	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/31/2004 4:30 PM	Location of Incident: In front of the World Trade Center	Precinct: 01	18 Mo. SOL 2/28/2006	EO SOL 2/28/2006	
Date/Time CV Reported Tue, 08/31/2004 5:05 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/31/2004 5:05 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DC Terence Monahan	00000	876747	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John White	05340	895147	PBBX TF
2. POM Thomas Spitzfaden	02830	924853	PBSI TF
3. LT Charles Harnan	00000	893142	PBBX TF
4. SGT Leslie Chan	00441	922099	005 PCT
5. POM Jason Stewart	05195	933388	101 PCT
6. POM Miguel Gutierrez	07436	926918	001 PCT
7. POM Jorge Caraballo	00827	926410	001 PCT
8. LT Joseph Sitro	00000	889331	PBSI TF
9. LT Christophe Delsante	00000	876279	A P DIV
10. POM Michael Stolzer	09128	933390	MTN PCT
11. CPT William Tracey	00000	896053	042 PCT
12. DI James Shea	00000	899847	047 PCT
13. SGT Sean Oconnor	03638	895125	VED Q
14. LT James Griffin	00000	910155	PBBX
15. INS Thomas Galati	00000	883903	GANG DV
16. SGT Terence Mcmenamy	04259	909615	PROPCLK
17. POM Brian Rickli	30141	931037	PBBX TF
18. POM Josh Lewis	23260	932876	009 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DC Terence Monahan	Abuse: Deputy Chief Terence Monahan authorized the stop of § 87(2)(b) and § 87(2)(b)	

## Synopsis

On August 31, 2004 at 5:05 p.m., § 87(2)(b) called the CCRB to file a complaint about an incident that occurred earlier that day, at approximately 4:30 p.m. on Fulton Street in Manhattan. § 87(2)(b) was not present for the incident; she was just filing the complaint on behalf of her brother, § 87(2)(b) and her cousin, § 87(2)(b) lives in § 87(2)(b) and § 87(2)(b) lives in § 87(2)(b).

On August 31, 2004, § 87(2)(b) and § 87(2)(b) were visiting New York City. The Republican National Convention (RNC) was taking place that day, although they were not in New York City for this event. § 87(2)(b) and § 87(2)(b) went to the World Trade Center (WTC) in order to take photographs of the monument. While they were there, at approximately 4:00 p.m., a group of protestors demonstrating against the war in Iraq left the WTC site at Church Street and marched eastbound on Fulton Street, heading towards Broadway. The protestors were marching on the north sidewalk of Fulton Street. § 87(2)(b) and § 87(2)(b) thought that it would be fun to take photographs of the protestors so they too walked up the northern Fulton Street sidewalk. When the front of the march was about halfway down the Fulton Street sidewalk, but before they reached Broadway, Deputy Chief Terence Monahan ordered the marchers to stop and, within seconds, ordered the officers to arrest the marchers (**Allegation A**). An orange net was put up, cordoning off approximately half of the northern Fulton Street sidewalk reaching from Church Street towards Broadway. § 87(2)(b) and § 87(2)(b) did not want to get arrested. They told Lt. Joseph Sitro that they were just tourists and were not part of the march. § 87(2)(b) and § 87(2)(b) voluntarily showed Lt. Sitro digital photographs of other tourist attractions they had recently visited in New York and their tickets to a Broadway play that evening. Lt. Sitro told PO Thomas Spitzfaden to write stop and frisk reports for § 87(2)(b) and § 87(2)(b) and to release them. § 87(2)(b) and § 87(2)(b) were released without being arrested or summonsed. While DC Monahan had reasonable suspicion to stop the entirety of the group on the Fulton Street sidewalk, it is unclear whether he had the requisite probable cause to arrest the entirety of the group. However, DC Monahan delegated to his subordinates the discretion to release individual members of the group. Lt. Sitro exercised this discretion when he released § 87(2)(b) and § 87(2)(b) § 87(2)(g)

## Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on September 1, 2004. On August 31, 2004 § 87(2)(b) and his cousin, § 87(2)(b) took a cab to the WTC Site because they were visiting New York and wanted to see the monument. When they arrived they saw protestors. § 87(2)(b) and § 87(2)(b) were not there to protest. They were taking pictures of the WTC Site when the protestors began to march. § 87(2)(b) and § 87(2)(b) decided to walk with the protestors because they thought it would be fun to take photographs of the marchers. § 87(2)(b) and § 87(2)(b) walked across Church Street and onto the Fulton Street Sidewalk with the marchers. When they were about half way up the Fulton Street sidewalk officers blocked one side of the street so that the protestors could not march anymore. One of the head officers yelled to the officers to arrest the protestors blocking the street. The officers closed off the block on which § 87(2)(b) and § 87(2)(b) were standing. They were standing with a couple of hundred other people on the sidewalk. The officers told the protestors that no one could enter the block and no one could leave the block. After about thirty-minutes the officers made an announcement that everyone was going to be arrested. § 87(2)(b) and § 87(2)(b) approached PO 1 (identified through the investigation as Lt. Sitro). § 87(2)(b) explained to PO 1 that they were not protesting and that they had just come to the area to see the WTC Site. § 87(2)(b) and § 87(2)(b) voluntarily showed PO 1 tickets they had to a Broadway play that was showing that night as evidence that they were just passing through the area. PO 1 went and spoke with PO 2 (identified through the investigation as PO Spitzfaden). PO 2 took § 87(2)(b) out of the enclosed area and questioned him for approximately five minutes. § 87(2)(b) could not hear what PO 2 was saying to § 87(2)(b) PO 2 then took § 87(2)(b) out of the enclosed area and questioned him about why they were there. § 87(2)(b) told PO 2 the same thing he told Lt. Sitro. PO 2 asked § 87(2)(b) for his license, his cell phone number, and the address where he was staying in New York, who he was staying with in New York, and the phone number to where he was

staying in New York. § 87(2)(b) gave PO 2 the information and PO 2 told § 87(2)(b) and § 87(2)(b) that they could go. They did not receive a summons and they were not arrested.

§ 87(2)(b) was interviewed at the CCRB on September 1, 2004. § 87(2)(b) corroborated § 87(2)(b)'s statement. § 87(2)(b) stated that they went to the WTC Site as tourists, but that when they saw the protestors they thought it would be fun to walk with them and take photographs. They walked up the Fulton Street Sidewalk with a couple of hundred other marchers. When they were about halfway up the Fulton Street sidewalk they were stopped. An orange barricade was put up around them. § 87(2)(b) and § 87(2)(b) spoke with PO 1 (The investigation determined that this was Lt. Sitro). They voluntarily showed PO 1 their Broadway tickets and digital photographs and convinced PO 1 that they were just tourists and not protestors. PO 2 (The investigation determined that this was PO Spitzfaden) took them out of the mesh netting and asked them some questions. § 87(2)(b) voluntarily showed PO 2 his identification and told PO 2 where he was staying. PO 2 allowed them to leave without a summons or being arrested.

### **Photographs**

§ 87(2)(b) provided the investigator with photographs. (Enclosure 3b-3n) Photograph 3b depicts the beginning of the march when the front of the march is crossing over Church Street onto Fulton Street. A white banner can be seen in the middle of this photograph. This is a banner which evidence gathered during the investigation demonstrated is the catalyst that ultimately led to DC Monahan's decision to arrest the protestors. Photograph 3c depicts § 87(2)(b) amongst the protest group at the corner of Church and Fulton Streets. § 87(2)(b) is the male in the black shirt smoking a cigarette. Photograph 3d is a photograph of § 87(2)(b) making a peace sign with his fingers. This shot appears to have been taken when § 87(2)(b) had walked a few feet eastward on Fulton Street towards Broadway. Photograph 3e depicts § 87(2)(b) standing on the fence of the cemetery, which abuts the north side of Fulton Street between Church and Broadway. § 87(2)(b) is making a W with his fingers. § 87(2)(b) appears to be a few feet east of Church Street on Fulton Street. Photograph 3f depicts § 87(2)(b) posing for a picture with a large smile amongst the group of protestors, after the group has moved onto Fulton Street and begun walking eastbound towards Broadway. Photographs 3g and 3h show a mass of people coming across Church Street and onto Fulton Street as well as a portion of the Fulton Street sidewalk. Photograph 3i depicts a large group of people standing on the Fulton Street sidewalk. Photograph 3j and 3k depicts the officers gathering in the intersection of Fulton and Church Streets and on the Fulton Street sidewalk. Photograph 3l depicts the group of people on the Fulton Street sidewalk. Photograph 3m depicts the orange netting after the officers have enclosed the group of protestors. Photograph 3n depicts § 87(2)(b) inside the orange netting making a peace sign with his fingers. Photograph 3O depicts the white banner that Chief Monahan and Ins. Galati mention.

### **Results of Investigation**

#### **Civilian Witnesses**

§ 87(2)(b) was interviewed over the phone on September 17, 2005. § 87(2)(b) is the complainant on § 87(2)(b) which was investigated separately by the CCRB. § 87(2)(b) was not interviewed in person because he lives in § 87(2)(b). On August 31, 2004, § 87(2)(b) was in New York to take his daughter up to college. His niece gave him a schedule of the protests. One of the protests scheduled was by the War Resisters League at the WTC site. At 4:00 p.m., § 87(2)(b) went to the PATH Plaza at the WTC to see what was happening. By the time he got there, approximately 200 people were already present. The crowd was calm; some people had signs, but no one was chanting. There were about 250 police officers present. Some were in riot gear, some were on bicycles, the majority had blue shirts and approximately 7 had white shirts. A little after 4:00 p.m. a white-shirted officer, PO 3 (identified through the investigation as Inspector Galati) addressed the crowd through a megaphone. He announced that this group did not have a permit and would therefore not be allowed to march in the street. However, he stated that people were free to walk on the sidewalk in whatever direction they chose. He requested that people walk two abreast to avoid blocking the sidewalk for others. He added that walkers would be expected to follow all laws of the city of New York. He said, "have a nice day" and he spoke in a tone that was calm and friendly. Following these remarks, § 87(2)(b) joined the crowd and walked from the plaza to Fulton Street. He had walked approximately 30 or 40 feet up the Fulton Street sidewalk when the crowd was unable to continue moving forward because police officers, many on bicycles, encircled the block forming

a human fence around the marchers. The officers asked everyone to remain on the sidewalk and to back up if they could. The crowd, approximately 200 people, obliged this request and no one was resisting in anyway. Several people, including § 87(2)(b) asked officers how they could leave and the officers told them either that they did not know or that people would have to stay put for the time being. § 87(2)(b) never heard the officers make a request for the crowd to disperse.

At approximately 4:20 p.m., police started unfolding an orange fence. There is an iron fence on one side of the sidewalk and the orange fence was stretched along the rest of the block. § 87(2)(b) overheard an officer call on his radio for “the prison buses” to be brought down. More police officers arrived approximately ten minutes later at 4:30 p.m. Under the direction of several officers in white shirts, people began to be processed and led out of the perimeter one by one on the West Side of the street in order to be taken into custody. § 87(2)(b) asked an officer if there was any reason that he should not “give himself up.” The officer said that it looked like everyone would be processed. § 87(2)(b) moved to the front of the crowd because he hoped to be processed early with the hope of being released sooner. Soon after the additional police officers had arrived at approximately 4:30 p.m., § 87(2)(b) was led out of the fenced in area and given to PO Jaime to be processed (§ 87(2)(b) identified PO Jaime by name). PO Jaime patted the outside of § 87(2)(b) s clothes. § 87(2)(b) was then handed off to PO Rickli who searched him by removing the contents of his pockets. PO Rickli took his picture and filled out some paperwork. At approximately 4:40 p.m., § 87(2)(b) boarded a city bus in which “Lt. Shea” was in charge. § 87(2)(b) asked LT Shea why he was being arrested and LT Shea stated “because you were there.” § 87(2)(b) was taken to Pier 57 where he was further processed. At 6:00 p.m., PO Rickli had finished with § 87(2)(b) s paperwork and photograph. At 1:00 a.m. § 87(2)(b) was taken in a bus to the tombs. After 11 hours of detention § 87(2)(b) met with the public defender. The public defender was the first person to inform § 87(2)(b) that he was being charged with 2 counts of disorderly conduct and one count of parading without a permit.

§ 87(2)(b) made a written statement on September 20, 2004 and he was interviewed at the CCRB on October 21, 2004. He is also the complainant in CCRB case number § 87(2)(b) which is being investigated separately. § 87(2)(g) § 87(2)(b) had read about the protest in the paper “Newsday.” He did not know if the group had a permit, but he believed that the protest would be peaceful. On August 31, 2004 at approximately 4:00 p.m., he got off of the subway and walked to the WTC site. An officer in a white shirt was telling people to get onto the sidewalk that bordered on the graveyard at Trinity and Church Street. He does not remember what this officer looked like and he stated that this officer was not speaking through a bullhorn or other megaphone device. Once § 87(2)(b) and the other protestors were on the sidewalk they were blocked in by officers on bikes. § 87(2)(b) stated that a male white officer with gray hair became very angry and was yelling. § 87(2)(b) stated that this officer “appeared to have lost his mind with anger.” § 87(2)(b) could not understand what he was upset about because the protestors had been completely peaceful and they had followed the orders to get onto the sidewalk. § 87(2)(b) further stated that no one had ever given the protestors any order to disperse and to his knowledge they had not defied any police orders. Officers then proceeded to trap the protestors in with orange netting. § 87(2)(b) was handcuffed. Buses arrived and all of the protestors were handcuffed and taken to Pier 57. § 87(2)(b) was charged with disorderly conduct and protesting without a permit.

§ 87(2)(b) was interviewed over the phone on October 13, 2004. She was not interviewed in person because she lives in § 87(2)(b). She is also the complainant in CCRB case number § 87(2)(b) which is being investigated separately. On August 31, 2004, § 87(2)(b) went to the WTC to participate in a march by the War Resisters League. § 87(2)(b) works for § 87(2)(b) § 87(2)(b). She was aware that the War Resistor’s League did not have a permit when she went to join the march and she had participated in three other Republican National Convention Protests earlier that week. She had an independent media press pass and she began the afternoon by interviewing some of the leaders of the War Resisters League. § 87(2)(b) said that the marchers planned to march up to Madison Square Garden o do a die-in. § 87(2)(b) said that she was planning on marching with them, but that she was not going to be part of the die-in because she did not want to be arrested.

At approximately 4:00 p.m., the marchers were gathered in front of the WTC and were almost ready to march. Right before they marched, an officer in a white shirt spoke through his bullhorn and stated, "if you remain on the sidewalk you will not get arrested, but if you go in the street you will get arrested, this includes press." § 87(2)(b) was towards the front of the march, and along with the other protestors, she crossed the street and walked up Fulton Street towards Broadway, staying on the sidewalk. As soon as they crossed onto Fulton Street police officers on bicycles lined the sidewalk on the right. Abutting the left side of the sidewalk on the north side of Fulton Street is a cemetery, and there were police officers located in the cemetery as well. This created a human barricade, which did not allow people to leave Fulton Street. When the group was about halfway up Fulton Street towards Broadway, the march stopped. There had not been any orders to disperse or warnings that marching would lead to being arrested. § 87(2)(b) was in the middle of the group when the march was stopped and at the time she thought that the officers were just trying to organize the people in some way. However, approximately 10 minutes after the group had stopped, the police officers that were making a human barricade took out orange netting and encircled the group to make certain that no one left the area. The protestors soon learned that they were being arrested. § 87(2)(b) had a press pass, but she did not show it to the officers because she did not think that her press pass was on the official list. She never asked an officer if she could leave because of her press pass. § 87(2)(b) was charged with disorderly conduct and protesting without a permit.

§ 87(2)(b) was interviewed on December 1, 2004. On August 31, 2004, § 87(2)(b) arrived at the WTC Site around 3:30 p.m. He was there to § 87(2)(b). § 87(2)(b) has not processed the § 87(2)(b) video, but he gave a video to the undersigned investigator that was made at the incident by § 87(2)(b), a friend of § 87(2)(b)s (see below for details). § 87(2)(b) stated that when he got to the site he spoke with a couple of civilians and then crossed Church Street onto Fulton Street to get a wide shot of the WTC Site before the march began. § 87(2)(b) stated that he has seen § 87(2)(b) video and that he knows officers gave announcements at the WTC site about the rules for the march right before the march stepped off. However, he stated that he was already on Fulton Street at the time the announcements would have been made and that he did not actually hear the announcements. While § 87(2)(b) was standing on Fulton Street shooting video, the march proceeded towards him onto the Fulton Street sidewalk. § 87(2)(b) stated that there was a sign at the front of the march and that he was attempting to get video footage of the sign when an officer stopped the march. The march was about halfway up the Fulton Street sidewalk at this time. § 87(2)(b) did not hear any orders to disperse. Soon thereafter, officers put up a bike barricade and then orange netting. § 87(2)(b) was arrested for disorderly conduct and blocking pedestrian traffic. § 87(2)(b) was taken to Pier 57.

§ 87(2)(b) was interviewed on June 10, 2005. § 87(2)(b) is an § 87(2)(b) and he attended many of the protests during the RNC in order to take photographs. § 87(2)(b) could not recall how or when he found out about the march. He said that he may have heard about it from other photographers or seen it in the paper. § 87(2)(b) arrived at the WTC at approximately 3:00 p.m. When he arrived, protest leaders § 87(2)(b) did not know their names) were speaking with officers about whether they would be allowed to march. Other protestors told § 87(2)(b) that the officers had previously decided that they were not going to allow the protestors to march. However, when he arrived the officers were renegotiating whether they would change their mind and allow the march. The protest leaders were asking questions about the rules and it was clear that they did not want to get arrested.

After speaking with some of the protest leaders, the officers decided that the marchers could march if they stayed on the sidewalk, if they marched four abreast, and if they did not march behind a banner. § 87(2)(b) stated that the rule about the banner existed for all of the protests that were unpermitted. He further stated that he believed there might have been an article in the *New York Times* about the prohibition of marching behind banners. In addition, he said that he believed there was a rule about not marching behind a sign of a certain size. § 87(2)(b) did not recall how the information about the rules was relayed at the WTC. He said he did not know if the information about what the rules were announced by an officer or if he heard about the rules from other protestors. He did not recall hearing any announcements over a bullhorn.

The march began and the marchers "were doing their darndest to follow their rules." § 87(2)(b) believed that the officers were allowing the march, however, he also believed that "they (the police officers) would

find a way to arrest them.” § 87(2)(b) said that he believed the group would get arrested because he had seen so many arrests at previous RNC events. He further stated that police officers are typically calm around large crowds, but that during the RNC they seemed much more volatile. § 87(2)(b) did not want to get arrested and he believed that the way to avoid arrest was to not walk directly with the marchers. § 87(2)(b) left the WTC with the marchers and he was about 50 feet behind the very front of the march. Instead of walking on the sidewalk with the marchers, he walked in a diagonal up Fulton Street and onto the south sidewalk on Fulton Street, across the street from the marchers. During the time he was on Fulton Street, the bicycle officers who were escorting the protestors were in between § 87(2)(b) and the marchers. § 87(2)(b) decision to move out of Fulton Street and onto the opposite sidewalk was prompted by an officer asking § 87(2)(b) to move out of the street. § 87(2)(b) stated that he felt it was less risky to walk in the street against the officers’ orders than it was to be a direct part of the march. The commanding officer (who would later order the arrests) was walking in the street towards the front of the march. At this time, the commanding officer was watching the marchers closely. § 87(2)(b) believed that the commanding officer was looking for something that the protestors were doing wrong so that he could arrest them. However, at this time the commanding officer did not seem angry.

Three or four people who were at the front of the march unfurled a banner when they were about 200 feet eastbound on the Fulton Street sidewalk, past the corner of Church Street. This was the first moment that § 87(2)(b) had seen the banner. In fact, he said that while some protestors were holding smaller signs earlier at the WTC, he had not seen any banners at this incident prior to that moment. The banner that was unfurled was made on a sheet and was about 2 or 3 feet high and 6 to 10 feet wide. When they unfurled the banner they may have paused for a brief moment as they were opening it, but it was not a drastic stop. The marchers had not stopped or paused at any time previous to this moment. § 87(2)(b) did not think that the unfurling of the banner caused the configuration of the marchers to change, meaning that the marchers did not spread farther across the street as a result of the banner. At the time the banner was unfurled, § 87(2)(b) was still in Fulton Street (he had not moved onto the sidewalk yet) and he was approximately 20 feet behind the banner. After the banner was unfurled, the marchers walked approximately 20 more feet. When the banner was unfurled, the commanding officer's demeanor changed from an observational stance, to an angry stance. At that time, the commanding officer angrily ordered that everyone from the people who unfurled the banner to the end of the block should be arrested. § 87(2)(b) stated that it was clear that the unfurling of the banner was the trigger that led to the arrests because the order was given almost immediately after the unfurling occurred. § 87(2)(b) said that many of the people arrested would not have even been able to see the banner because they were up to 200 feet behind the banner.

§ 87(2)(b) never heard any orders to disperse and he was about parallel to the sign on the opposite sidewalk at the time the arrest order was given. This placed § 87(2)(b) less than 30 feet from the commanding officer. § 87(2)(b) said that the commanding officer was angry when he gave this order. Bicycle cops proceeded to cordon off the people being arrested. Then officers came around with netting and used the netting to keep the people on the north Fulton Street sidewalk. § 87(2)(b) did not get arrested since he was on the south sidewalk when the announcement was made. § 87(2)(b) went into the cemetery at this time and took photographs of the protestors. § 87(2)(b) never published any of his photographs from the WTC protest. § 87(2)(b) gave one of his photographs to the investigator (See enclosure 10D).

§ 87(2)(b) and his attorney were contacted. § 87(2)(b) said that he was willing to speak with the CCRB, but that he preferred to do it after his deposition. His deposition was not scheduled until the end of January 2006. Because the CCRB did not want to delay this case further, § 87(2)(b) was not interviewed.

## Video Footage

**Video tape 1:** § 87(2)(b) the civilian witness mentioned above, gave the investigator a copy of a video tape that was taken during this incident by § 87(2)(b), a colleague of § 87(2)(b)s. A summary of the videotape is presented below.

*Note: the time references below are taken directly from the videotape. They do not reflect the time when things occurred. Instead they represent how long the video had been running at the time the footage was taken.*

At 23:23 there is a congregation of officers and civilians in front of the WTC. At 24:40 Ins. Galati gives an announcement through a bullhorn. He states "I am Inspector Galati from the New York City Police Department. I am informing and warning all marchers that this is a march without a permit. You must comply with all rules or else you will be subject to arrest. You have to walk either in single or double file so that you do not obstruct pedestrian traffic. If you obstruct pedestrian or vehicle traffic I have to inform you, you will be subject to arrest. You will also have to comply with the lights. You cannot cross against the lights. I ask for your cooperation so that everybody has a safe march." At around 25:35 Chief Monahan's muffled voice can be heard saying "you are all blocking the sidewalk if you do not disperse you will be placed under arrest." As the person holding the videotape gets closer to the front of the march, Chief Monahan can clearly be heard saying, "You are all blocking the sidewalk if you do not disperse you will be placed under arrest. Form a line. You are now blocking the sidewalk. Form a line. You are blocking, hey officers, form a line, form a line right here. I need arrest teams behind, arrest teams behind. Cordon it off down till the block. Everyone here is under arrest." The amount of time between when the first order to disperse is given (which is barely audible on the tape) and the announcement that everyone is under arrest is approximately 50 seconds. Around the time DC Monahan was ordering the arrests, the white banner can be seen on the videotape. Arrests 28:40 the arrests begin.

*TARU footage:* (See enclosure 32A-32B)

*These videotapes were time and date stamped. References to times below reflect the hour and minute at which the footage was taken.*

#### **Tape 71**

At 3:58 p.m., Ins. Galati is visible speaking with § 87(2)(b). Their conversation is audible. Inspector Galati says, "I am going to tell you right now. You do not have a permit for this. All right. Especially right here (Ins. Galati is referring to a banner) in the front, I am telling you right there the sign on the sidewalk that would be an obstruction." § 87(2)(b) replies, "We are going to orient it (the banner) toward single file pointing towards the traffic." Ins. Galati responds, "Okay. I just want to make sure we are clear on the rules. The sidewalk is very small over there. If you have to walk single file then you are going to have to walk single file. If anybody in the crew obstructs pedestrian traffic they will be subject to arrest. I can't emphasize that enough." § 87(2)(b) says, "You have to give them a warning because they may not know that." Ins. Galati says, "I am giving you a warning right now." § 87(2)(b) says, "We don't have a bullhorn. So what we are going to do is march with the banner facing traffic. It is not going to block the sidewalk, it is going to go sideways." Ins. Galati finishes the conversation by saying, "We are going to get some warnings right now with bullhorns so everybody understands what this situation is. Again, if you don't obey all rules, crossing with the lights, if anyone steps out, we are going to give warnings that they are subject to arrest." At 4:00 p.m. Ins. Galati issues his warnings to the crowd via a bullhorn held by Ins. Shea. Ins. Galati stated, "I am Inspector Galati from the New York City Police Department. I am informing and warning all marchers that this is a march without a permit. You must comply with all rules or else you will be subject to arrest. You have to walk either in single or double file so that you do not obstruct pedestrian traffic. If you obstruct pedestrian or vehicle traffic I have to inform you, you will be subject to arrest. You will also have to comply with the lights. You cannot cross against the lights. I ask for your cooperation so that everybody has a safe march." At 4:02, the marchers leave the WTC and cross over Church Street and onto Fulton Street. At 4:04 p.m., DC Monahan angrily tells officers to block further progression of the march. The march is then stopped at approximately the midway point between Church Street and Broadway on Fulton Street. At this point, people start asking to leave and are told that they are not allowed. At 4:07, two people (not § 87(2)(b) and/or § 87(2)(b)) are let out. At 4:10 p.m. orange netting is set up. People again ask if they can leave and are told that they cannot.

#### **Video 75**

This videotape depicts essentially the same thing as tape 71. The only difference is that from this vantage point Chief Monahan can be heard saying, "everyone gets collared" at 4:07 p.m. At 4:10 Ins Galati is talking to Chief Monahan on radio but it cannot be heard what is said.



## Video 85

This video covers the same footage as the previously discussed videos. The only new information in this video is that at 4:32 p.m. § 87(2)(b) is talking to a police officer and showing him the Broadway tickets. And, at 4:36 p.m. § 87(2)(b) shows bankcards and maps. From the angle of the video the officer speaking with § 87(2)(b) cannot be seen. However, the conversation can be heard. The officer asked § 87(2)(b) for his sister's address and where he was prior to the WTC that day. The shot is of § 87(2)(b). The officer cannot be seen.

### Other Videos:

Defense Attorney § 87(2)(b) provided the investigator with a video taken by § 87(2)(b). § 87(2)(b) was a civilian who was present during this incident. § 87(2)(b) was not interviewed by the CCRB.

§ 87(2)(b) **Video** (as this video does not have a visible time and date stamp, the times noted below are derived from the length of time the video has been running at the point that these events are visible.)

At 4 seconds, Ins. Shea can be seen giving announcements to protestors over a bullhorn. He tells the protestors not to block traffic and to follow all laws. Ins. Shea also tells them that if they did not comply with the laws and regulations of New York State that they would be subject to arrest. Finally he can be seen telling them to “march safely,” and that he would be with them throughout the march. At 1:36 cars pass on Church Street as the marchers wait for the light to change. At 2:13 people cross Church Street.

Ins. Shea stands in Church Street and repeats the warnings two more times as marchers walk across Church Street and on to Fulton Street. Ins. Shea is again warning them to follow all of the traffic laws and repeats that it is an unpermitted march and that if laws are violated people will be subject to arrest. People begin walking up the Fulton Street sidewalk. People are spilling into Church Street and Fulton Street and civilians begin yelling at people to get out of the street. The Fulton Street sidewalk becomes more and more crowded and civilians yell to other civilians to keep moving and not to stop. The video is shot from the west end of Fulton Street, looking eastward and jumps around a lot. Many shots are of the pavement or sky. DC Monahan cannot be seen or heard on this video. A few minutes after Ins. Shea issues his warnings, bikes are shown on Fulton Street forming a line parallel to the north sidewalk where the protestors are walking. Orange netting is then put up around the protestors on Fulton Street. At 17:00 § 87(2)(b) and § 87(2)(b) are screaming “power of the union” and “peace.” At 18:00 people are chanting “we are peaceful let us disperse.”

**News Footage Video** (as this video does not have a visible time and date stamp, the times noted below are derived from the length of time the video has been running at the point that these events are visible)

At 00:26 people are shown marching. At 00:34- an officer pushes people into line. At 00:56 an officer grabs a lady and puts her in line. At 3:20 DC Monahan ordered everyone to be arrested.

### Police Witnesses

**Deputy Chief Terence Monahan** was deposed by the NYCLU on December 1, 2005. The deposition was not concluded by the time of Chief Monahan’s CCRB interview on January 5, 2005. The NYCLU provided a transcript to the CCRB, which is included in the case file. Because DC Monahan’s statements were consistent, his statements are combined below.

DC Monahan was the commanding officer of the Mobil Field Force during the RNC. The Mobile Field Force consisted of 50 teams of 8 task forces, 20 mobile forces, 12 bicycle forces, and 12 scooter forces. DC Monahan was the commanding officer of the Mobil Field Forces during the Republican National Convention. As the commanding officer, DC Monahan reported to Chief Estavillo. Directly under DC Monahan’s supervision was Inspector Galati. DC Monahan stated that prior to the RNC he had been in charge of approximately 40 or 50 unplanned demonstrations. Of those 40 or 50, DC Monahan only authorized arrests in two incidents. The first incident was in Washington Heights during the demonstration protesting the Kiko Garcia shooting in 1992 during which approximately 20 people were arrested for sporadic acts of violence. The second incident was during the World Economic Forum during which DC Monahan authorized approximately 50 arrests.

The Mobile Field Force was put together approximately 1 year prior to the RNC and it was at that time that Chief Estavillo (the Chief of Patrol for the Police Department) told DC Monahan that he would be in charge of the Mobil Field Forces. DC Monahan stated that Police Commissioner Kelly was aware of his appointment as commanding officer to the Mobile Field Forces. The Mobil Field Forces were responsible for all unplanned demonstrations and they assisted on certain planned demonstrations. DC Monahan stated that a planned sidewalk march would be an example of something that the Mobile Field Forces would have been in charge of. DC Monahan further stated that no other units would have been responding to such an event. The Mobile Field Forces' goal was to respond to the demonstrations and to negotiate with the people in order to devise a way that people could safely get from "point a to point b." Chief Estavillo gave DC Monahan the power to use his discretion at these incidents to evaluate what actions should be made and DC Monahan was given full authority to order arrests. DC Monahan stated that his responsibilities were the same on August 31<sup>st</sup> as they were for the rest of the convention and that he was in fact the commanding officer at the War Resistor's League March that occurred on Fulton Street. Further, DC Monahan did not recall there being any other officers of equal or higher rank than himself at this incident. DC Monahan stated that Sgt. Sean O'Connor and Lt. James Griffin were his aides during the RNC.

During the first week of the convention, the intelligence unit informed DC Monahan that there was going to be a demonstration on Fulton Street and that the demonstrators were planning to march up and stage a "die-in" near Madison Square Garden. DC Monahan did not receive any more details about the demonstration at this time and he did not make any plans for how the Fulton Street march would be handled because they were addressing the demonstrations on the day that they occurred. On August 31<sup>st</sup> around 1:30 p.m., DC Monahan was at Baxter Street for an unplanned march. At this time, Chris Dunn from the NYCLU told DC Monahan that there were only going to be about 20 or 30 people at the demonstration that was going to start on Fulton Street. This is the first time that DC Monahan was given any information as to how many people might appear for the march. DC Monahan sent Ins. Galati to the WTC to assess the situation. DC Monahan did not recall what time he sent Ins. Galati to the site and he did not have any conversations with Ins. Galati before he, DC Monahan, went to the site himself around 3:00 p.m.

Lt. Griffin drove DC Monahan to the site. DC Monahan got out of the car on Church Street near the WTC and he spoke immediately with Ins. Galati on the Church Street sidewalk near the WTC. The only other person present for the conversation was Assistant Commissioner Robert Messner. In this conversation, Ins. Galati informed DC Monahan that he spoke to § 87(2)(b) who was organizing the march. Ins. Galati told DC Monahan that § 87(2)(b) had informed him that the goal of the march was to walk onto the floor of the convention. DC Monahan told Ins. Galati that they could not allow this. At around 3:15 p.m., Ins. Galati took DC Monahan over to § 87(2)(b) so that DC Monahan could speak with § 87(2)(b) directly. This conversation took place on the Church Street sidewalk near the WTC and DC Monahan believed that 4 or 5 of § 87(2)(b) people were present for the conversation. DC Monahan did not know any of the people with § 87(2)(b) and there was no one else from the PD present for the conversation.

During this conversation, § 87(2)(b) told DC Monahan that they planned to walk to the floor of the convention and that wherever the police stopped them, they were going to lie down in the middle of the street and the police would have to arrest them. DC Monahan told § 87(2)(b) that they were not going to allow the protestors to go to the floor of the convention. DC Monahan further asked § 87(2)(b) where they were looking to march. § 87(2)(b) pointed to the streets that he was looking to go on. § 87(2)(b) said that they wanted to walk up Fulton Street to Broadway and then walk up Broadway all the way to Union Square. DC Monahan told § 87(2)(b) that the route would be very dangerous for both the marchers and any officers who accompanied them because the marchers would be going counter-flow to traffic. DC Monahan told § 87(2)(b) that with that route he would not be able to give the protestors a lane of traffic to march in because that would be going against the traffic. However, he told § 87(2)(b) that if they would agree to go on a street where they would march with the flow of traffic, he would assist them by giving them a full lane of traffic in which to march. § 87(2)(b) told DC Monahan that he did not care and that they were just going to take the route they had already planned. He further stated that if the officers did not want to come, then they did not have to come. At that point DC Monahan told § 87(2)(b) "If you try and march this way and you block any pedestrian traffic, if you

block anything, you are going to be arrested.” § 87(2)(b) replied, “well we are just going to walk on the streets, like anyone has the right to walk on the streets. We know how not to block traffic. I have marshals here, (indicating “a bunch of guys that he has with armbands”) and we won’t walk anymore than two abreast, at any point during this thing we will be separated, there will be a lot of room in between all of us.” § 87(2)(b) then pointed specifically to Fulton Street and said, “I know on that block right there, Fulton Street, if I walk anymore than single file, I will be blocking that street.” (According to DC Monahan, the “street” reference was to the sidewalk not the roadway.)

§ 87(2)(b) had two men with him who were holding a banner that required two people to carry it. The banner was about 10 feet in length, and was on two cardboard sticks. (DC Monahan stated, when viewing the § 87(2)(b) video, that this banner was the white banner with black writing on it. He further stated that this was the banner that was stretched across the sidewalk later in the march). § 87(2)(b) said, “I know that this sign, the only way I can take that down Fulton Street is walking it in single file, if I pull that thing across the street, I will be blocking that entire sidewalk, so we are going to make sure that everything we do, we will block nothing.” § 87(2)(b) told DC Monahan that his people were not going to march or to protest and that they were just going to walk like anyone else. DC Monahan reiterated to § 87(2)(b) “Well if you turn it into a march or a demonstration where you are going to block the street [meaning sidewalk] you will be arrested.” § 87(2)(b) told DC Monahan that he knew that.

When asked to clarify what if any difference there was between a march and a walk, DC Monahan said, “by walking, anyone can walk on the street [meaning sidewalk], it is just a group of people or a person walking with someone else. A march is an organized thing behind a banner behind a single thing where you know as a whole group as an entity are doing something like an entity blocking an entire street or an entity taking a whole lane of traffic. Like when we do on all the other unplanned demonstrations we allowed during the week we gave them a lane of traffic that group blocked that lane of traffic, but they negotiated, worked with us and we were able to do it safely, so that would be a march when you are an entity behind a banner going as a group together. A walk is two people walk here two people walk there separate and distinct.” DC Monahan stated that it is obviously not illegal to walk, but that it is illegal to block the street and cause a safety hazard. When asked if there was anything illegal in carrying a banner if the banner does not block the street or sidewalk, DC Monahan said, “if you are having an unpermitted march, yes. If you are holding a banner across the street and having a march, yes, it is against the law without a permit, parading without a permit.” When asked if he had any discussion with § 87(2)(b) about whether the banner could be carried at all if it was carried so that it was not blocking traffic, DC Monahan said, “He § 87(2)(b) told me he wouldn’t block traffic and that they were only going to march with these two guys were going to be holding their own banner, that they weren’t leading a march that they were just going to be holding their own banner.” DC Monahan told § 87(2)(b) “well if they block traffic they are going to get arrested.” When asked if the banner would have been a problem if it had not blocked traffic, DC Monahan said, “if they walked by themselves, they weren’t blocking traffic, yeah it wouldn’t have been a problem.” DC Monahan stated that there were other smaller signs that were being carried on sticks. However, the other banners that he saw were smaller and would not have blocked traffic. DC Monahan did not discuss the other signs with § 87(2)(b) because he did not feel that they would block traffic.

DC Monahan stated that the conversation was “very light,” that it was not argumentative and that § 87(2)(b) was simply “matter of fact” in that that the protestors were going to do what they planned to do. DC Monahan stated that he never told § 87(2)(b) that he was okay with anything that § 87(2)(b) had planned. DC Monahan told § 87(2)(b) that they were going to give warnings and that if the protestors blocked anything that they would be arrested. DC Monahan stated that he decided to give these warnings because § 87(2)(b) stated that he was going to conduct this walk “no matter what I (DC Monahan) said.” DC Monahan stated that he had no ability to stop the march/walk, until the law was violated. When asked if he (DC Monahan) thought that it would be possible for the protestors to walk in such a way that they would not get arrested, DC Monahan said, “I believed, yes.” I believed that they were going to make every attempt to walk separately and distinct, that they were going to be spaced out and make every effort since they had their own marshals, not to block traffic because they wanted to be able to walk up to Union Square.” DC Monahan further stated, “Again it was a discretionary call, if they were able to conduct a walk where you know though it could be a requirement to get a permit if they were going

to be able to conduct this in a safe manner it would have been allowed.” DC Monahan was asked if he was familiar with the Legal Guidelines for the RNC that were issued during training. DC Monahan stated that he was familiar with them. DC Monahan was shown page 6 of the Legal Guidelines and asked if it was his understanding based on these guidelines that a permit was required for demonstrators to walk or march along the sidewalk. (Legal Guidelines for the RNC pg. 6 states: “(e) Generally no permit is required for groups of demonstrators to walk or march along the sidewalk. If such conduct results in substantial disruption of pedestrian or vehicular traffic, members of the group could be arrested for disorderly conduct or simply ordered to disperse. Generally, however, it has been the department’s policy to accommodate these marches, whether planned or unplanned, in order to minimize disruption (enclosure 1F).”) DC Monahan stated, “Yeah I know that, but actually, we give permits for marches on sidewalks and if you read our departmental administrative guides to procedure, it states ‘a permit is required for any parade or demonstration on any street and or roadway, which to me the definition of street is building line to building line.’” Thus, DC Monahan stated that the street includes both the roadway and the sidewalk. Further, DC Monahan stated that during the convention they allowed 20 or 30 unpermitted marches because the protestors worked with him to make the marches safe. DC Monahan stated that this one was different because the protestors did not work with him to make the march safe.

DC Monahan stated that he spoke with Commissioner Messner after speaking with § 87(2)(b) and that he told Commissioner § 87(2)(b) everything that § 87(2)(b) had told him. DC Monahan also told Commissioner § 87(2)(b) that they were going to give some legal warnings. DC Monahan stated that this conversation took place on the sidewalk in front of the WTC and that he was not sure if anyone else was present for the conversation. DC Monahan stated that his conversation with Commissioner Messner did not change his thoughts on the march and that it had no effect on his decisions during this incident. DC Monahan then spoke with Ins. Galati again and told Ins. Galati to give instructions to the protestors that if they blocked any pedestrian traffic they would be arrested. DC Monahan stated that he did not give Ins. Galati any more specifics on what to say and he stated that he did not give Ins. Galati the exact wording for the warnings. DC Monahan stated that he did not know if Ins. Galati came up with the exact wording for the announcements or if Ins. Galati read the statements from wording that was predetermined by the legal bureau. Finally, DC Monahan stated that there were no other protests during which he had ordered warnings to be issued. DC Monahan stated that at all the other demonstrations, the protestors negotiated with him so that a safe route was devised and thus no warnings were needed. DC Monahan stated that the only person he negotiated with at this incident was § 87(2)(b) who declared himself to be the leadership. DC Monahan believed that § 87(2)(b) went and spoke with some of the protestors, but he stated that § 87(2)(b) never made any announcements through an amplifying device.

Shortly after his conversation with Ins. Galati, DC Monahan heard Ins. Galati announcing the warnings over a megaphone. DC Monahan stated that he would estimate that approximately 700 protestors were in the area in front of the WTC when the announcements were given. Ins. Galati, who was also standing on the Church Street sidewalk in front of the WTC said that this was an unpermitted march and that “if you, you must obey all the rules, all the laws that if you block any vehicular or pedestrian traffic you could be arrested; if you, you must obey all traffic signals or you would be arrested and that at the end he stated ‘have a safe march.’” (DC Monahan watched the § 87(2)(b) video tape and confirmed that the announcement he heard Ins. Galati give, was the announcement Ins. Galati gave in the video tape.) DC Monahan stated that the statement that the march was unpermitted meant, “[the police department] is not allowing the march, that it is not permitted, that it is illegal to conduct a march.” When asked if he, DC Monahan, believed that everything Ins. Galati said was in accordance with the rules and regulations for this incident, DC Monahan said, “the only thing he said that I wasn’t you know happy with, but it was too late, was have a safe march, he should have said ‘have a safe walk,’ that is what he was planning, that we were not authorizing any march.” DC Monahan stated that the semantics were wrong because § 87(2)(b) and the protestors were supposed to walk separately and distinctly and they were not allowed to march as a group. DC Monahan further stated that the phrase “have a safe march” was most likely said to keep people calm and to warn people not to endanger anyone. DC Monahan stated that the comment to have a “safe march” was in no way sanctioning the march. When asked if he, DC Monahan, believed that there was any confusion caused by the comment “have a safe march,” DC Monahan said, “I don’t believe so.” DC Monahan did not make any further announcements after hearing Ins. Galati say to have a safe march and he did not ask any other officers to make any other announcements. DC Monahan stated that no other

announcements were given because they did not have time to do so because the march started almost immediately after Ins. Galati's announcement.

During Ins. Galati's announcement, someone in the back yelled that he or she could not hear the warning. Ins. Shea took another bullhorn and went to the back of the crowd. However, DC Monahan was not able to hear Ins. Shea's announcement because he, DC Monahan, had already started walking towards Fulton Street. During the announcements, DC Monahan was standing on the Church Street sidewalk in front of the WTC. § 87(2)(b) and the people with the banner were towards the front of the group of people, meaning that they were standing on the Church Street sidewalk in front of the WTC, closest to Fulton Street.

After Ins. Galati's announcements, four or five people with cameras started jumping into Church Street to take photographs of the protestors. DC Monahan yelled at these individuals to get back on the sidewalk. The people got back onto the sidewalk and DC Monahan did not arrest these individuals at that time. People from the group started asking questions such as "what does this mean (referring to the announcements), are we allowed to march?" As some officers were attempting to talk to the people asking the questions, Sgt. O'Connor told DC Monahan verbally that the march had started. DC Monahan, who was standing in Church Street, looked up and saw marchers crossing Church Street and heading east on the Fulton Street sidewalk. DC Monahan stated that from the moment the marchers stepped onto Fulton Street they were not in compliance with the law because the moment they hit Fulton Street they fanned out across the street and blocked pedestrian traffic. DC Monahan quickly walked up Fulton Street (not on the sidewalk). When DC Monahan got about half way up Fulton Street, he saw § 87(2)(b) and the people holding the banner at the front of the march. The front of the march was about 50 feet farther east than DC Monahan on the Fulton Street sidewalk. When DC Monahan saw § 87(2)(b) and the people holding the banner at this time, the banner was stretched all the way across the Fulton Street sidewalk, blocking the entire sidewalk. DC Monahan walked eastward on Fulton Street in order to catch up to the front of the march. Cars were coming west on Fulton Street and DC Monahan had to jump out of the way of the cars. At this time, men with cameras were jumping into the street to take pictures of the marchers who were on the sidewalk. Cars were still coming westbound and were only missing the men with cameras by inches. Also at this time, officers on bicycles were in the street, abutting the sidewalk with the marchers, trying to form a line to protect the marchers. In order to form this line, the officers had to weave through the traffic that was coming westbound.

When DC Monahan walked east on Fulton Street to catch up to the front of the group where the banner was, he could see that the entire sidewalk was blocked. The entire sidewalk was full and people were walking three and four across. When DC Monahan arrived at the front of the march he saw § 87(2)(b). DC Monahan asked § 87(2)(b) "What are you doing? You told me you weren't going to do any of this, that you weren't going to pull the banner, that you were going to walk single file." § 87(2)(b) told DC Monahan that he would turn the banner so that it was going vertically up the street. DC Monahan told § 87(2)(b) "this is dangerous, someone is going to get killed." When DC Monahan was asked if he meant that someone was going to literally get killed, DC Monahan stated that he had in fact been literal in his statement. DC Monahan stated that he had almost been hit by 2 or 3 cars moving down Fulton Street. DC Monahan stated that he witnessed 4 or 5 people jumping in front of cars on Fulton Street and that they could have also been hit. DC Monahan stated that the officers had to weave through traffic and a car could have hit them. DC Monahan said that when he was standing in front of the group on the sidewalk and was talking with § 87(2)(b) that he saw, "nothing but a mass of people going down," and that while he was speaking with § 87(2)(b) the marchers kept progressing forwards. DC Monahan stated, "I am intimidated, looking at a group like this coming towards me. Any regular civilian on the street would have been extremely intimidated running into traffic to get out of the way." Thus, DC Monahan stated that he believed this incident could have killed a pedestrian who had to go into the street to avoid the crowd, it could have killed an officer who was having to weave through traffic on Fulton Street, and it could have killed the protestors who were spilling into the street. At that point DC Monahan told the marchers to stop. DC Monahan stated that from what he saw, the entire group stopped. DC Monahan stated that he did not see the stop as having caused any type of pile up. Rather, he observed that the pile up started before he stopped the marchers and that the pile up was, in fact, the reason why he had stopped them. Furthermore, DC Monahan stated that this was the first time that the march stopped.

After stopping the march, DC Monahan gave three orders to disperse. He yelled, “you are blocking the flow of pedestrian traffic, if you do not disperse you will be arrested.” DC Monahan repeated this two more times. DC Monahan stated that he made these requests one after the other and that there was no pause in between his orders. DC Monahan did not see anyone attempt to disperse when he made these orders. DC Monahan stated, “based on my conversations with Heddeman earlier in the day when he said the only way we could end this is by being arrested, at that point, I ordered the arrests to be made.” DC Monahan stated that he gave the order for the arrests immediately after his last order for the protestors to disperse. DC Monahan demonstrated for the record how he ordered them to disperse. When DC Monahan demonstrated, 13 seconds past from first moment he gave the initial dispersal order to the moment he ordered the arrests. DC Monahan stated that his dispersal and arrest orders during the actual incident were the same as this demonstration in both timing and language. DC Monahan was in front of the group when he gave the dispersal orders. DC Monahan stated that there were 200 some people on the Fulton Street sidewalk at this time. DC Monahan stated that he did not use any type of amplifying device when he gave this announcement, that he did not ask any other officers to give the order to disperse, and that he did not take any steps to ensure that the people who were back towards Church Street could hear this announcement. However, DC Monahan stated that he believed his voice was loud enough for people on the entire street to hear his orders.

When asked what he wanted the protestors to do when he ordered them to disperse, DC Monahan stated that he wanted them to leave the area. DC Monahan was then asked how they could disperse given that the cemetery fence was to the left of the protestors, a line of police officers on Fulton Street was to their right, if they kept going forward they would be continuing in the direction of the march, and if they went backward they would now have to weave through the stopped march. DC Monahan stated that the protestors could have crossed over Fulton Street and then dispersed at that point. When asked if the protestors had been told earlier during the protest that if they went into the street they would be arrested, DC Monahan said that the protestors had been told this. When asked if DC Monahan made any announcements to the protestors that they could now go into the street in order to disperse, DC Monahan stated that he had not. When asked if he was concerned that this mass of people crossing the street would cause a dangerous situation, DC Monahan stated that at that particular moment he was not concerned because he had all of his officers in the street and traffic had come to a stand still. DC Monahan stated that if anyone had made an attempt to disperse that they would have accommodated the marchers and helped them to disperse. However he stated that, “no one attempted, there was no attempt by anyone, no one questioned as to where they should disperse to, there was zero response from anyone within the crowd and based again on my conversation with the groups and its intentions was that they had no intentions of dispersing when stopped by the police, they expected to be arrested.” DC Monahan stated that he was standing in the front of the group in the middle of Fulton Street and that since he is 6’1” and Fulton Street slopes downward from where he standing, looking west, he was able to see all the way to the corner of Church and Fulton Streets. Thus, because he could see all the way down the street, he knew that no one attempted to disperse. Finally, DC Monahan stated that the specific reason he ordered the arrests was because the marchers had blocked pedestrian traffic when they did not have a permit and that they caused a dangerous situation by doing so.

DC Monahan ordered the arrests for all of the people who were on the Fulton Street sidewalk beginning from the northeast corner of Church and Fulton Streets all the way up to where DC Monahan was standing at the front of the march. DC Monahan stated, while watching the § 87(2)(b) video, that he thought the people who were holding the banner may have been to the east of him at the time he gave the order to arrest and that he brought them back into the group in order to have them arrested. This was confirmed by the § 87(2)(b) video footage. However, anyone else who was east of DC Monahan at the time he gave the arrest order was not stopped or arrested. DC Monahan stated that the reason he chose to arrest all of the people west of the banner on the Fulton Street sidewalk was because that was the group of people he saw specifically blocking the sidewalk. The investigator asked DC Monahan if he saw every single person he arrested blocking the sidewalk. DC Monahan responded, “Every person was in there because I walked from here from the front, from the back to the front from the front to the back and that’s where I sealed it off. I walked from the front afterwards when I stopped them and told them that they were going to be under arrest. I walked down; I observed the whole group. I observed everyone that was in there blocking

and that's why I sealed it off at the gate line because that's where at this fence line I could see that they were straight across blocking. People that were on the crosswalk were allowed to leave." DC Monahan stated that he was pretty confident that everyone who was on the Fulton Street sidewalk from the banner back was a protestor. However, he said that there were safeguards in place to ensure that only protestors were arrested. After everyone was sealed off, DC Monahan expected Ins. Galati to use his manpower to find out if there was anyone who was being kept in the netted area that was not involved in the protest. DC Monahan stated that Ins. Galati had discretion to release anyone who was not a part of the march. DC Monahan stated that he heard from Ins. Galati later that Ins. Galati had released some people even though he suspected they were part of the march. When asked if any steps were taken to see if any of the people on the Fulton Street sidewalk had been attempting to walk two by two prior DC Monahan issuing the arrest order, DC Monahan stated, "that group from my vantage point, from what I saw, anyone involved in that group knew that they were blocking that entire sidewalk and in my opinion were intentionally doing so."

DC Monahan was not involved in processing the arrests. DC Monahan stated that he did not know if more officers had to be called in to effect the arrests because Ins. Galati was in charge of ordering the correct number of officers as the situations dictated. DC Monahan stated that after he ordered the arrests, but while he was still at the scene, he spoke with Commissioner Messner. The contents of this conversation were not discussed because of attorney-client privilege, however, DC Monahan stated he did not do anything differently subsequent to this conversation.

DC Monahan stated that all of these cases were dismissed in court. DC Monahan stated Kris Hamman from the DA's office called him and told him that the arrests were made based on probable cause, but that decisions were made above her to dismiss the cases for political reasons. DC Monahan stated that Mr. Hamman did not tell him what these political reasons were.

DC Monahan stated that he conferred with counsel prior to being notified that he would be interviewed by CCRB about this incident. At that time he reviewed some TARU tapes and the § 87(2)(b) tape. DC Monahan stated that the only other time he has testified about this incident was a couple of weeks before this interview with the NYCLU. DC Monahan stated that he was notified by CCRB in early December of our request for an interview and that he did not talk with anyone about the case after he was notified by CCRB.

DC Monahan was shown TARU tape 71 footage showing Ins. Galati engaged in conversation with § 87(2)(b). Ins. Galati spoke with § 87(2)(b) before DC Monahan spoke with § 87(2)(b). DC Monahan stated that the conversation Ins. Galati had with § 87(2)(b) on the tape is different than the conversation DC Monahan had with § 87(2)(b) because when he spoke with § 87(2)(b) he told § 87(2)(b) that they could not march and when Ins. Galati spoke with him in the video, Ins. Galati was just reiterating that if they blocked traffic they would be arrested.

DC Monahan was shown the § 87(2)(b) video in which Ins. Shea told the marchers to march "safely." DC Monahan stated that he did not hear Ins. Shea say this.

DC Monahan was shown the § 87(2)(b) Video. At the point on the video where the people are marching up Fulton Street, before the arrests were made, DC Monahan was asked if the protestors were complying. DC Monahan said, "They are not complying. No...One, they are not in single file and two, this is a side angle, if you were at the front angle where I was, you would see that it was an impossibility to walk through." When asked if he believed at that time that they were causing a hazardous situation, DC Monahan said, "Yes. If you look in the front of that group you have you are looking at a single shot, anyone walking on that block in front would see that the entire sidewalk is blocked. If they turned around and looked behind them they would see the entire sidewalk is blocked." When asked if the hazardous situation of people getting hit by oncoming traffic was occurring at this point on the video, DC Monahan said, "if you move the camera three frames forward, three frames back, yes you would see it." DC Monahan stated that he was the one screaming the dispersal orders and the order to "form a line." DC Monahan identified the large white banner with black writing as the one that had been previously stretched across the street. This banner is shown on the § 87(2)(b) video at around 26 minutes.

**Ins. Thomas Galati** was deposed by the NYCLU on November 29, 2005. He was not interviewed by the CCRB. The following is a summary of the deposition. In preparation for the deposition, Ins. Galati met with the Law department in the spring or early summer of 2005. Assistant Deputy Commissioner Thomas Doepfner and Deputy Commissioner Andrew Schaeffer, both of the NYPD Legal Bureau, were also present at this meeting. During this meeting, Ins. Galati reviewed a TARU videotape and the § 87(2)(b) videotape of the Fulton Street incident. Ins. Galati has had general conversations with Chief Monahan about this incident, such as the fact that they had been called to testify about it, but Ins. Galati did not discuss the details of the incident with Chief Monahan before he was deposed.

On August 31, 2004, Ins. Galati was assigned to the Mobile Field Force. Chief Monahan was the commanding officer of the Mobile Field Force and Chief Monahan's executive officer was Ins. Tommy Graham. Ins. Galati was in charge of the daytime Mobile Field Force and Ins. O'Neil was in charge of the nighttime Mobile Field Force. Prior to the RNC, the only arrests for an unpermitted demonstration that Ins. Galati recalled being involved with was the World Economic Forum, although he was not the person who ordered the arrests at that protest.

Ins. Galati attended 4 or 5 training sessions prior to the RNC about handling situations, which arose during the RNC. All of the training took place at the Disorder Control Unit located in the Bronx. Ins. Graham provided the training and the trainees in his sessions were mostly officers ranked captain or above. Ins. Galati stated that police officers attended different training than supervisors and lower ranking supervisors attended different training than higher-ranking officers. Because of rank, Ins. Galati was in the training with other higher-ranking officers. During this training, Ins. Galati received the Legal Bureau publication about the legal guidelines for the RNC. Ins. Galati also stated that the nets were discussed at the training. The training taught that the nets were used to contain an area so that people within the net could not leave and people outside of the net could not enter. However, Ins. Galati stated that he did not recall any discussion about how decisions would be made in arrest situations as to who would be enclosed inside the nets.

Ins. Galati believed that the first time he learned there was going to be a protest at Fulton Street was on August 31<sup>st</sup> at a supervisory meeting. Chief Monahan, Ins. Graham, and Ins. Galati were the people present for this supervisory meeting and at this meeting Ins. Galati received a written itinerary of all the protests for the day. At this meeting, Ins. Galati learned that the march that was planned to start on Fulton Street did not have a permit and that the group planning the march was the War Resister's League. Ins. Galati also learned that other groups, two of which were the Ruckus Society and Black Block, were thought to be meeting up with the War Resister's League at some point during the march. Ins. Galati stated that these groups had been known to be violent in the past. One of Ins. Galati's duties on August 31<sup>st</sup> was to "visit those locations (protest sights) to make sure that we had the correct amount of people there, re-deploy, if necessary, you know, just to ensure that the daily operations were going forward" (enclosure 17A-98). At 2:30 p.m. on August 31<sup>st</sup>, Ins. Galati went to Fulton Street to see how many people were gathering and to determine how many officers they needed to police the event. When Ins. Galati arrived at Fulton Street, he was the highest-ranking officer there at the time. Ins. Galati observed groups of people gathering with signs and Ins. Galati determined from his observations that a protest was likely to take place.

Ins. Galati attempted to determine who was in charge of the protest by asking people who were standing in the area. The people pointed to § 87(2)(b). Ins. Galati spoke with § 87(2)(b) and § 87(2)(b) told him that the group planned to march to the floor of Madison Square Garden. Ins. Galati told § 87(2)(b) that it would not be possible for them to march to the floor of Madison Square Garden and § 87(2)(b) told him that they would march as far as they could and when they were stopped they would do a "die-in." Ins. Galati told § 87(2)(b) that they would be arrested if they staged a "die-in." § 87(2)(b) told Ins. Galati that he understood, but that it was his intention to do it anyway. § 87(2)(b) stated that their intended route was to go up Fulton Street, on the sidewalk, and then make a left onto Broadway, again staying on the sidewalk, and that they would be marching northbound on Broadway against the traffic. Ins. Galati told § 87(2)(b) that he did not think this would be safe. Ins. Galati asked § 87(2)(b) if he § 87(2)(b) would be willing to take a different route so that they would be moving with the flow of traffic rather than against it. § 87(2)(b) stated that he would not change the route and that he was going to go up Broadway. § 87(2)(b) did not know if 200 or 2,000 people would



participate in the protest and Ins. Galati told § 87(2)(b) that marching up the Fulton Street and Broadway sidewalks would be dangerous because they would obstruct vehicular and pedestrian traffic. § 87(2)(b) told Ins. Galati that his marchers were not going to obstruct any kind of traffic. § 87(2)(b) stated that he knew his rights and that if his marchers walked one or two at a time they could march anywhere they wanted. § 87(2)(b) stated that he had marshals to keep the group in line and he again reiterated that no one was going to block any type of traffic. Ins. Galati told § 87(2)(b) that the sidewalk on Fulton Street was especially small and that they would not be able to walk more than one or two abreast without blocking traffic. § 87(2)(b) agreed and again stated that they would not block the sidewalk. During the deposition, the following question and answer exchange ensued between Chris Dunn and Ins. Galati about the lawfulness of people walking on the sidewalk without a permit (pg. 106-108).

Q: "And do you understand that...so long as they were walking on the sidewalk in a lawful manner that they were entitled to do so without a permit?"

A: "Yeah, he § 87(2)(b) stated that they would walk like that, and I am aware that if they walked single or double and did not take over the sidewalk that he would be able to walk on the sidewalk, yes."

Q: "What makes you think that someone has to walk single or double on the sidewalk?"

A: "It would be—if they were marching as a group of eight or ten across then they would take over the complete sidewalk, it would block pedestrians that were walking in the other direction, it would create—create a problem."

Q: "Okay. You would agree people are not entitled to block the sidewalk; is that right?"

A: "Yes."

Q: "But you don't know of any rule that requires people walking one or two abreast, do you?"

A: "I don't necessarily, I don't know if it's a rule, as you put it, or a law, I just know that, you know, it—that was a statement that was made to ensure that nobody was blocking the sidewalk."

Q: "I realize that walking one or two abreast would assure that, but you're not suggesting, are you, that you believe that people are required to walk one or two abreast on a sidewalk?"

A: "I don't know that."

Q: "It is correct, is it not, that so long as people are not blocking the sidewalk they are entitled to march on the sidewalk without a permit; is that correct?"

A: "Providing that they're not blocking the sidewalk, that they are obeying all pedestrian and vehicle traffic rules, yes, they would be able to walk."

Q: "Without a permit?"

A: "Without a permit. Providing that they complied with all the rules."

Ins. Galati stated that there were people holding a large banner that were near § 87(2)(b) during this conversation. Ins. Galati told § 87(2)(b) that the banner looked as if it was going to block the sidewalk. § 87(2)(b) told Ins. Galati that it would not block the sidewalk because they would carry it so that it was not going across the sidewalk, but was being held "long ways" instead (the same way as the sidewalk runs). At this time, Ins. Galati asked Assistant Commissioner § 87(2)(b) to come over. Assistant Commissioner § 87(2)(b) came over and Ins. Galati repeated the conversation with § 87(2)(b) in the presence of Assistant Commissioner § 87(2)(b). § 87(2)(b) reiterated that his crowd was going to proceed with what they had planned. Ins. Galati told § 87(2)(b) that he did not believe that they would

be able to march up the Broadway sidewalk going against the traffic in a safe manner. Ins. Galati then called a representative from TARU over and asked TARU to tape the conversation he was having with § 87(2)(b). On tape, Ins. Galati reiterated to § 87(2)(b) that this was “an unscheduled march, that we didn’t believe it would be able to be safely done, and that I suggested that he, you know, he, you know, wouldn’t go forward with this march, but he understood, he stated how he was going to do his march and that he was going to stay within the limits of the law, and that he was going to go ahead and have this unscheduled march” (enclosure 17A-113-114).

Ins. Galati gave warnings that the march was unpermitted and that if any laws were broken the marchers would be subject to arrest. Ins. Galati instructed Ins. Shea to go to the rear of the group to repeat the warnings that it was an unpermitted march and that if they violated the law they would be subject to arrest. He also instructed Lieutenant Sullivan to continue giving warnings as people stepped off the sidewalk.

“The march begins, and almost immediately this massive group stepped off the curb and did not really comply with any, you know, single or double file that was—that I would say was agreed upon with § 87(2)(b) that the banners in fact came out right across, and they crossed the street completely congested Fulton which has the cemetery on the side; the light had changed, people had kept crossing with the light” (enclosure 17A-117). Ins. Galati stated that during this time he was with the front of the march and that Chief Monahan was walking up and down Fulton Street alongside the marchers. Ins. Galati heard someone yell for the marchers to disperse. Ins. Galati stated that the voice sounded like Chief Monahan, however, he could not be certain.

About 30 seconds after the order to disperse was given, then the march was about halfway between Broadway and Church Streets. At this time, Chief Monahan stopped the march because the marchers “had taken over the—the—entire sidewalk and the banner had been displayed going straight across the whole entire sidewalk.” (Enclosure 17A-120) Ins. Galati stated that he knew this is the reason Chief Monahan stopped the marchers because Chief Monahan told Ins. Galati that this was his reason for stopping them. Ins. Galati stated that he observed the marchers block the sidewalk and that if Chief Monahan had not stopped the march that he (Ins. Galati) would have because the marchers were violating the law by blocking pedestrian traffic.

After the group was stopped, Chief Monahan and Ins. Galati had a discussion in which they agreed that everyone on the Fulton Street sidewalk from where the march was stopped to the corner of Fulton and Church Streets would be arrested. When asked whether any distinction was made in order to differentiate those who were walking two abreast from those who were not, Ins. Galati said, “This group was acting as one, and as it proceeded, it was pushing, you know, it was creating a hazardous condition that, you know, the group as a whole was creating and should that group had made it to Broadway, that hazardous condition would have even grown to a—point where it would have been extremely dangerous to the police, the press, the marchers, the traffic, midtown on 4 o’clock on a – on a – on a busy business day, so this group was acting in a hazardous manner as a complete group, not as an individual that was, you know, not necessarily one or two abreast” (enclosure 17A-133). When asked why Ins. Galati believed that all of the people who were arrested were acting as a single unit, Ins. Galati stated, “There was a coordinated effort on their part, everyone that was confined with that area was part of this protest, you know, from my observations as, you know, this - - started, you know, when they - - stepped off and started to walk, they walked as a group.... Their actions were together” (enclosure 17A-134). When this decision was made, officers on bicycles surrounded the group and put up a net in order to cordon off those being arrested.

The arrests were processed. Flex-cuffs were used in the arrests rather than regular handcuffs. Ins. Galati stated that if the Flex-cuffs were removed, it was with special metal cutters (not regular scissors). Supervisors carried the metal cutters.

Ins. Galati spoke with representatives from the District Attorney’s Office in the days after this incident. Ins. Galati did not recall the names of any of the representatives with whom he spoke. Ins. Galati stated that during these conversations he simply relayed his observations about the Fulton Street incident. Ins. Galati later read in the paper that the cases were dismissed. Ins. Galati stated that he believed when he saw it in the paper that it was the first time he learned of the dismissals. Ins. Galati did not recall ever speaking

with the DA's office about why the cases were dismissed and he stated he did not know why they were dismissed.

Ins. Galati did not fill out any UF-49's for this incident.

**Assistant Commissioner Robert Messner**, an Assistant Commissioner of the Civil Enforcement Unit of the Police Department's Legal Bureau, was interviewed on July 18, 2005. AC Messner has served the Police Department as a civilian for 18 years. Throughout the RNC, AC Messner was a legal advisor. Starting the second night of the RNC he was assigned to stay with the arrest teams and the Mobile Field Force. Chief Monahan was the head of the Mobile Field Force and Ins. Galati, Capt. Shea and Ins. Shea were all a part of Chief Monahan's team. AC Messner has known Chief Monahan for many years and he has worked with Chief Monahan multiple times before. AC Messner was assigned to stay with Chief Monahan, help out with the demonstrations and answer any legal questions that they had.

Sometime in the morning on August 31, 2004, Chief Monahan told AC Messner to go to the WTC at approximately 3:30 p.m. that afternoon. However, there was no discussion about the protest before he got there or about how it would be handled. When AC Messner arrived at this location at around 3:30 p.m., he called Ins. Galati from his cell phone. Ins. Galati was already on the scene and came to meet AC Messner on Church Street in front of the WTC. Ins. Galati told AC Messner that he told § 87(2)(b) the leader of the group organizing this protest, that because the group did not have a permit that they could not block vehicular or pedestrian traffic and that they had to cross with the lights or they would be arrested. Ins. Galati asked AC Messner to join the conversation and go over with § 87(2)(b) what he had just been told. AC Messner spoke with § 87(2)(b) in Ins. Galati's presence. AC Messner again reiterated to § 87(2)(b) that New York law states that it is illegal to block pedestrian or vehicular traffic. § 87(2)(b) told AC Messner that it was not a problem because the group was going to walk two by two. At this time, Ins. Galati pointed to a banner that protestors were holding. The banner was "very large." AC Messner stated that he could not give any estimations of the banner's size except to say that it could block the entire sidewalk and would take about 5 to 8 people to carry it. AC Messner did not think that the banner was on wooden posts and he could not recall what color the banner was. Ins. Galati informed § 87(2)(b) that the banner should not block vehicular or pedestrian traffic either. § 87(2)(b) stated that they were going to hold the banner sideways so that it did not block vehicular traffic. Next, Ins. Galati asked § 87(2)(b) what route the group was planning on taking. § 87(2)(b) told him that he did not want to divulge that information, but that he assured AC Messner and Ins. Galati that they would follow all of the traffic rules. Ins. Galati then asked § 87(2)(b) where they were going and what their objective was. § 87(2)(b) stated, "naturally our objective is to march onto the floor of Madison Square but we don't really think you all our going to let us do that, so what we are going to do is we are going to march as close to the garden as we can get and when you stop us we are going to do a die-in." AC Messner told § 87(2)(b) that this was fine as long as they did not block vehicular or pedestrian traffic. The conversation ended at this time and AC Messner told Ins. Galati that he thought the conversation had gone well and that § 87(2)(b) intentions seemed good. Ins. Galati agreed. AC Messner did not have any further conversation with Ins. Galati about the conversation and they did not discuss how the Police Department was going to handle the march. Chief Monahan was not present for this conversation. AC Messner did not tell Chief Monahan about this discussion. AC Messner stated that he assumed Ins. Galati told Chief Monahan about this conversation because Ins. Galati was serving as Chief Monahan's right-hand man. However, AC Messner did not hear Ins. Galati speak with Chief Monahan about the conversation. AC Messner did not recall speaking to Chief Monahan at any point at the WTC before the march started.

AC Messner heard announcements being given by Ins. Shea. The announcements basically informed the protestors that they did not have a permit and that they could not block vehicular or pedestrian traffic and that they had to stop at the stoplight. AC Messner did not recall hearing any mention of the banner in the announcements. AC Messner did not know whose decision it was to make those announcements. When asked if the Legal Bureau predetermined the announcements, AC Messner stated that there was a legal guide prepared for the RNC for internal use. AC Messner believed that the legal guide contained some sample announcements in it. However, he stated that he did not have anything to do with the preparation of the legal guide. AC Messner stated that the announcements were generic and that they centered around the definition of disorderly conduct. Finally, AC Messner stated that it is possible that the Legal Bureau

predetermined the announcements but that he did not know because he had nothing to do with announcements being made.

AC Messner planned to march with the protestors. When the crowd stepped off, AC Messner was toward the back of the group. AC Messner was not with Chief Monahan and he could not see Chief Monahan. When AC Messner was crossing the street between Church and Fulton Streets, Chief Monahan was walking down Fulton Street back towards Church Street yelling to close off the street because the march was over and everyone was going to be arrested. This was the first time during the march that AC Messner either saw or heard Chief Monahan. AC Messner stated that he did not hear any orders to disperse. When he was shown the § 87(2)(b) videotape, he stated that he did not hear the orders to disperse or even the original order from Chief Monahan to seal off the street, which were clearly audible on the videotape. AC Messner stated that he would have been too far back to hear Chief Monahan. After watching the video clip, AC Messner stated that he believed Chief Monahan's intent in giving the order to disperse was for the protestors to open up part of the sidewalk by having some of the marchers slow down while other marchers walked ahead so that they would thin out into a two by two walking formation. AC Messner did not think Chief Monahan's intent was for the protestors to leave the sidewalk or leave the march. In addition, AC Messner stated that he did not recall seeing the banner (the one that Ins. Galati had spoken to § 87(2)(b) about) at any point during the march. However, again, he stated that he was so far back that if the banner was being held down, that he would not have been able to see it. Finally, AC Messner stated that he never saw the protestors stop marching at any point before Chief Monahan ordered the arrests. When asked if there was any way to determine whether everyone who was on the Fulton Street sidewalk was a protestor, AC Messner said, "Certainly to me, it looked like everyone who was there was part of the march." However, he admitted "there were certainly some people on that sidewalk who the cops afterwards the legal guide. AC Messner stated that the announcements were generic and that they centered around the definition of disorderly conduct. Finally, AC Messner stated that it is possible that the Legal Bureau predetermined the announcements but that he did not know because he had nothing to do with announcements being made.

Chief Monahan did not confer with AC Messner before ordering the arrests. AC Messner did not speak with Chief Monahan about his decision to stop the march and order the arrests until sometime later that evening. That evening, Chief Monahan told AC Messner that "they blocked the street, they said they wouldn't and so we collared them."

AC Messner stated that he spoke with Jay Krannis from the Corporation Counsels Office about two months after the RNC. AC Messner stated that he had watched some TARU footage with Jay Krannis. AC Messner never saw himself on any of the videos. AC Messner stated that he thought Ins. Galati and Chief Monahan had also spoken with Jay Krannis.

**Lt. James Griffin** was interviewed on June 3, 2005. Lt. Griffin did not keep a memobook during the RNC. Lt. Griffin has worked with Chief Monahan for about seven years, and Chief Monahan selected Lt. Griffin to be his aid during the RNC. Lt. Griffin would typically be with Chief Monahan all day during the RNC. Sgt. O' Connor was also with Chief Monahan throughout the RNC. Sgt. O'Connor was Chief Monahan's operator. Chief Monahan was in charge of the Mobile Field Forces and he was the commanding officer at this incident.

Lt. Griffin was not sure when he learned about the march that would start at the WTC. He stated that because Chief Monahan was receiving intelligence sheets everyday, he would surmise that Chief Monahan learned about the march either the morning before the march or the morning of the march. When Chief Monahan found out about the march through Intel, he would have most likely informed Lt. Griffin of the march. Lt. Griffin stated that there were no formal plans on how the march would be handled because they did not know what to expect. Furthermore, Lt. Griffin did not recall Chief Monahan having a conversation with anyone about what he was planning to do about the march. Lt. Griffin had been present with Chief Monahan at previous unpermitted events during the RNC. He stated that how these events were handled depended on the demeanor of the protestors and the response of the protestors to the police.

Lt. Griffin did not know what time he and Chief Monahan arrived at the WTC. However, when they arrived, they went to the area where the Path train comes in. There was a large group of protestors gathered there. The protestors were not doing anything to cause alarm. Lt. Griffin and Chief Monahan found the person in charge of the march; however, Lt. Griffin could not recall his name. Chief Monahan spoke with the leader of the march. Lt. Griffin stated that he was present for this conversation, but that he was standing behind Chief Monahan (possibly talking on his phone) and that he did not hear the whole conversation. However, Lt. Griffin said that he recalled snippets of the conversation. The gist of what he recalled was that leader of the march wanted the protestors to walk up Broadway to 14<sup>th</sup> Street to Union Square Park and then to Madison Square Garden. Chief Monahan told the leader numerous times that the march was unpermitted, that the course which the leader had set forth was unsafe and that the protestors would not be allowed to march on the street as they desired. However, Chief Monahan told the march leader that the protestors could march to Madison Square Garden if "they would walk single file, on the sidewalk." The leader of the march said that they had marshals to keep everybody in order and that the marchers and the marshals would "try to do the best they can." Ins. Galati told Lt. Griffin sometime later in the day on August 31, 2004 that he had also spoken with the march leader. However, Lt. Griffin was not present for the conversation between the march leader and Ins. Galati and he did not know what Ins. Galati and the march leader discussed.

After Chief Monahan spoke with the march leader, Chief Monahan ordered the bikes and scooter units to come to the WTC. Lt. Griffin knew that Chief Monahan did this, because he overheard Chief Monahan make the order. Officers on bikes and scooters were going to ride along with the marchers to provide protection to the marchers. They would provide protection by creating a barrier between the cars and the marchers to ensure that none of the marchers were hit by a car. The Mobile Field Force was also at the incident when the march commenced. Lt. Griffin did not know if Chief Monahan had ordered the Mobile Field Forces to come to the area before the march began, if another officer had ordered them to come down, or, if they had just been assigned to be in the area in case things got out of control. Lt. Griffin stated that the Mobile Field Forces only role during the RNC was to effect arrests. He further stated that if the marchers had stayed on the sidewalk in single file, that the Mobile Field Force would not have done anything during the march. Lt. Griffin said that Chief Monahan had every intention to allow the marchers to march all the way to Madison Square Garden as long as they, "walked in single file and followed the rules that everybody agreed to."

Chief Monahan did not personally take any measures to inform the protestors of the rules for the march. However, Ins. Galati and Ins. Shea got on a bullhorn and made an announcement. Lt. Griffin did not know who made the decision for announcements to be made and he never heard Chief Monahan ask Ins. Galati or any other officer to make an announcement about what had been decided. Furthermore, Lt. Griffin said that it was possible that Ins. Galati decided himself to make the announcement. Finally, Lt. Griffin said that the Police Department's Legal Bureau had previously decided on the exact warnings that would be given if warnings had to be made. The Legal Bureau then wrote out verbatim what the warning would be. Lt. Griffin believed that Ins. Galati's and Ins. Shea's announcements were this verbatim warning that had been predetermined by the Legal Bureau. Lt. Griffin did not know what the exact warning was because he had never read the warning prepared by the Legal Bureau. Finally, he stated that he heard Ins. Galati and Ins. Shea give the announcements, however, he was not paying attention to what they were saying.

When the march commenced, Lt. Griffin and Chief Monahan crossed over Church Street with the marchers. When the marchers crossed Church Street to begin the march, they were complying with the rules. However, when the marchers hit the sidewalk at the corner of Fulton and Church Streets, they began disobeying the order to march in single file. Specifically, Lt. Griffin stated, "There were two people in front that had a banner, they were supposed to walk one behind each other with the banner stretched out from one to the other, this way it did not occupy the sidewalk. As soon as they crossed the street, that banner went sideways occupying the entire sidewalk, or most of it you know there was two feet on each side, and everybody was filling in behind it and walking towards Broadway." When Lt. Griffin watched the TARU video at the CCRB, he said that the banner he was speaking of is shown at 4:04:22. He stated that this banner was about five (5) feet wide. However, when the banner is shown on the video it is being confiscated by DCPI after the arrests are effected. Lt. Griffin stated that the turning of the banner at the corner is not shown on either the TARU or the § 87(2)(b) video.

As the marchers were walking up Fulton Street, Lt. Griffin and Chief Monahan walked in front of the marchers, so that the marchers were walking towards them. When he and Chief Monahan were in front of the marchers, they were clearly able to see the banner that was moving horizontally up the block and the people that were filing in behind the banner (not marching single file). When the banner turned sideways, the problem with marchers filling the sidewalk began. Lt. Griffin further stated that when the banner went sideways, "nobody made any attempt to stay behind the person in front of them." Lt. Griffin did not take any steps to ensure that everyone on the sidewalk at this time was a protestor and he did not observe any other officers take any steps to ensure this either.

At some point as the marchers were walking up the Fulton Street sidewalk, the people holding the banner stopped in order to let the other protestors catch up. When first asked if all of the protestors stopped, or whether only the people holding the banner stopped, Lt. Griffin said, "when the banner stops, if they kept walking they would be knocking over each other so when that stops here, they all stopped going back." However, when asked to show the point on the TARU or the § 87(2)(b) Video in which the marchers stopped, Lt. Griffin said that he was unable to find the time in which they stopped on this footage. He said that the footage did not show the very front of the march. He said that maybe only the front of the march stopped and the people behind them continued walking. Originally when asked if the marchers stopped before Chief Monahan ordered everyone to disperse (this order is discussed in the next paragraph), Lt. Griffin stated that he did not know if they stopped before or after the order to disperse and he did not know if the marchers stopped more than once. However, later in the interview he stated that he believed that the marchers stopped before the order was given to disperse. Finally, Lt. Griffin did not recall Chief Monahan ever asking the marchers to "keep it moving" or to continue walking.

When the protestors were about half of the way up Fulton Street, Chief Monahan gave orders to the protestors to disperse. Lt. Griffin did not recall what the specific order was and he did not know how many orders were given. Lt. Griffin did not think that the order to disperse was given on a bullhorn, because Chief Monahan did not have a bullhorn that day. There were a couple hundred people on the Fulton Street sidewalk at the time Chief Monahan gave the order to disperse. There is a fence on the north side of the sidewalk and the street is on the south side of the sidewalk. The protestors had previously been told that they were not allowed to go into the street. Lt. Griffin said that the protestors could have dispersed by leaving through the street. However, he said that he did not hear any announcements given to the protestors that they were allowed to go in the street in order to leave. Some of the marchers who were at the corner of Church and Fulton Streets dispersed, however, the marchers who were in the middle of the crowd on the Fulton Street sidewalk did not disperse. When everyone did not disperse, Chief Monahan ordered for everyone on the Fulton Street sidewalk to be arrested. Chief Monahan ordered the Mobile Field Force to "form a line," at the point where he wanted marchers to be cordoned off and arrested. The Mobile Field Force lined up around the protestors and then put up orange netting to keep everyone who was going to be arrested in the area.

The people enclosed in the netting were not allowed to leave. However, Lt. Griffin stated that he allowed one woman to leave, because the woman showed him that she had just bought something in the area. Lt. Griffin did not discuss this decision with Chief Monahan and he said that he used his discretion in allowing her to leave. In addition, Lt. Griffin said that there was no standard or protocol for how or if exceptions would be made. If an exception were made it would have been made based on the discretion of the officer who allowed the person to leave. Lt. Griffin did not see anyone other than the woman he had made an exception for being allowed to leave. He said that some people attempted to escape, but that he did not see anyone successfully escape.

Lt. Griffin went to two training sessions for the RNC. One at Randals Island and one at the Disorder Control Unit. He attended these sessions sometime in the months leading up to the RNC and he attended with other lieutenants, sergeants and officers. Lt. Griffin did not recall receiving any written materials regarding the training. At the training, he was told that the orange netting would be used to effect arrests in some instances. However, he did not recall receiving any further training on the netting.

Lt. Griffin went to speak with Commissioner Schaeffer about this incident approximately one month before the interview. They discussed what Lt. Griffin recalled from the protest. There was only one conversation and it lasted approximately 1 hour. This conversation was not recorded. Lt. Griffin viewed some TARU footage from this incident at this meeting. Lt. Griffin told Chief Monahan that he was coming down for this incident, however, he did not speak with Chief Monahan about this incident in depth. Lt. Griffin did not speak with anyone else before coming down to the CCRB. Finally, Lt. Griffin did not fill out any UF-49's for this incident.

Lt. Griffin was shown the § 87(2)(b) video. Lt. Griffin identified Ins. Galati as being the officer who made the announcement on the § 87(2)(b) video and he stated that the officer holding the bullhorn was Ins. Shea. (This is at approximately 22:40 on the tape.) Lt. Griffin stated that he did not recall where he was when Ins. Galati gave the speech in the § 87(2)(b) video and he stated that he did not recall specifically hearing the announcement. When asked about Ins. Galati's statement that the marchers could march in double file, Lt. Griffin said that he thought Chief Monahan had specified that they would have to march in single file only. He did not hear Chief Monahan and Ins. Galati ever discuss whether they could march in double file and he did not know why Ins. Galati said that they could march in double file. Lt. Griffin identified Chief Monahan as the officer who was saying; "Anyone in media who blocks the street will be arrested." (This is at approximately 25:20) Lt. Griffin stated that he did not recall where he was when Chief Monahan made the announcement about the media and he did not specifically recall where he was at the time it was made. He also identified Chief Monahan as being the officer on the video asking the crowd to disperse and then ordering the officers to form a line. (This is at approximately 26:00 on the tape.)

Lt. Griffin was also shown TARU video 79. Lt. Griffin said that at 4:04:06, Lt. Griffin sees himself on the video. At around this time a woman from DCPI is seen taking the banner that had previously been blocking the sidewalk. He said that the video did not show the banner before it was confiscated, thus it is not possible to see on the video the point towards the beginning of the march when the banner was turned sideways.

**Sgt. Sean O'Connor** did not keep a memobook during the RNC. Sgt. O'Connor was interviewed at the CCRB on May 26, 2005. Throughout the RNC, Sgt. O'Connor was Chief Monahan's operator and aid. Chief Monahan was the commanding officer at the WTC incident. At around 3:00 p.m. on August 31, 2004, Sgt. O'Connor and Chief Monahan arrived at the WTC. Sgt. O'Connor parked the car on Church Street on the WTC side of the street near the area where Vesey and Church Streets intersect. Sgt. O'Connor and Chief Monahan walked around the WTC observing the large crowd of protestors that had gathered for the march. The protestors did not appear to be a violent group. Sgt. O'Connor was under the impression that the marchers wanted to march to Madison Square Garden taking a route on the street, which would have had them marching against vehicular traffic. Chief Monahan told Ins. Galati, the other bosses and some of the protestors (maybe the leaders of the protests, Sgt. O'Connor was not sure) that he would allow the group to march, but that the group would have to march on the sidewalk. When he told them this he was speaking to them directly, he was not talking over the bullhorn. Chief Monahan also told them that the protestors could not walk in the street on Broadway or obstruct vehicular traffic. Finally, Chief Monahan said that they must follow all traffic laws. Sgt. O'Connor did not hear Chief Monahan make any specifications about how many abreast they were supposed to march. Ins. Galati asked Chief Monahan if he wanted him to tell the protestors that it had been decided that they could march if they followed the traffic laws and Chief Monahan told him to go ahead and make an announcement. Ins. Galati got on a bullhorn and told the protestors that they could march if they followed all of the traffic rules and if they marched two abreast. Sgt. O'Connor believed that this announcement was given a couple of times over the bullhorn.

Chief Monahan informed the officers that they would walk with the marchers to Madison Square Garden and that they would provide protection for the marchers. The officers were going to help the protestors cross the streets safely and they were going to walk bicycles along the curb line to protect the people from vehicular traffic. Sgt. O'Connor said that Chief Monahan believed that it was feasible for the protestors to follow the guidelines he had set forth and Chief Monahan "had every intention of letting them march."

When the march started, Sgt. O'Connor was on the WTC side of the street at the intersection of Church Street and Fulton Street. Sgt. O'Connor said that the marchers crossed over Church Street to Fulton Street

"legally with the walk sign." He further stated that "the front part of the march did comply as they started to walk." As far as Sgt. O'Connor observed, this group was only able to stay in compliance from the point where they left the Church Street sidewalk and crossed over to Fulton Street (in accord with the traffic light signal) until the first part of the line reached the middle of the Fulton street sidewalk and stopped. When the front protestors stopped, it "caused a back spill on the sidewalk to the curb line into the two lanes of traffic and along the north side of the cemetery." Sgt. O'Connor stated that he did not know why the front of the march stopped and he could not tell if it was the exact front of the march or if it was just towards the front that stopped. Sgt. O'Connor was still standing at the intersection of Church and Fulton when the march stopped, however, he could see that they stopped because he is 6'5" tall and he could see over the marchers. (Fulton Street tilts uphill beginning at Church Street and the uphill continues past where the march stopped.) Sgt. O'Connor originally said that at this time he saw Chief Monahan walk west on Fulton Street towards Church Street "telling the protestors to 'keep it moving, keep it moving.'" Sgt. O'Connor did not think that the front of the line moved. When asked if the middle of the line could move if the people in front of them were stopped, Sgt. O'Connor said, "nobody behind them, when they stopped (the front of the line), was able to move." When asked where the police officers wanted the middle of the march to "keep moving" to, if the people in front of them were stopped, Sgt. O'Connor said that the officers wanted those people to keep moving forward (even though he just said that these people could not move). When asked that same question again, Sgt. O'Connor said that the people in the middle could have moved through the people who were stopped. When asked if they were still supposed to be marching two abreast at the point when they should have moved through the stopped people, he answered yes. . When asked if the marchers had any other options on where they could "keep it moving to," Sgt. O'Connor said the marchers could have gone east n Fulton Street (this would have involved walking in the opposite direction of the march and moving through all of the marchers who were behind them.) Some of the marchers did jump the fence to the cemetery in order to leave the area and some of the marchers left the area via Fulton Street. Officers had previously told the marchers, however, not to go in the street. Sgt. O'Connor did not know if the marchers who jumped the fence were arrested and he said that those marchers who left via the street were most likely not arrested.

The marchers that had stopped were causing protestors to pile up and spill into Church Street. In addition, some marchers continued to walk once the light changed. The combination of these two things caused vehicular traffic to be blocked on Church Street. Sgt. O'Connor told the protestors who were in the middle of Church Street to get back to the WTC site until the light was green. They complied (these people were not arrested.)

As stated above, Sgt. O'Connor originally said that Chief Monahan told the crowd to keep moving when the marchers stopped. However, Sgt. O'Connor later said that he was not sure if the marchers stopped because Chief Monahan ordered them to do so. Sgt. O'Connor further stated, "On Church it stopped and I can't say precisely when, but Chief Monahan, and I wasn't present when he said it, but I have seen it on TV, Chief Monahan told the guys, alright that's it, shut it down, just lock up these people right here." Chief Monahan then ordered the bike officers to seal off Fulton Street from the point where the march was stopped to the northeast corner of the Fulton and Church Street intersection. After giving this original order, Chief Monahan walked down Fulton Street (westbound) to the corner of Fulton and Church Streets, repeating the order for the officers to seal off this area. Sgt. O'Connor heard Chief Monahan order the arrests for the first time when Chief Monahan walked westbound down Fulton Street. towards.

When asked if he knew what Chief Monahan was arresting the protestors for, Sgt. O'Connor said "specifically no... what they were arrested for I don't know off the top of my head." In addition, Sgt. O'Connor did not know if there was any attempt to disperse the crowd. The reason Sgt. O'Connor did not know this information was that he had not had any interaction with Chief Monahan between the moment that the front of the line stopped, to the moment when Chief Monahan was walking down Fulton Street repeating the order for the marchers to be arrested.

Chief Monahan then called for the arrest teams to arrive. "The people who were in the street blocking the traffic were allowed to leave...and the people who were on the Trade Center sidewalk were allowed to leave." Thus, only the people who were on the Fulton Street sidewalk were arrested. Sgt. O'Connor did not hear Chief Monahan make any statement about exceptions being granted and he did not see anyone



approach Chief Monahan to ask if someone could be let go. Sgt. O'Connor did not think that there were any guidelines about who could be allowed to leave the area. He believed that exceptions would have been taken care of on a case by case basis with the officer who dealt with the person asking to be let go. When the arrest teams arrived, orange netting was put up to keep the arrestees in the area. Once the officers began putting the prisoners in the van, Chief Monahan and Sgt. O'Connor left to go to Madison Square Garden in response to a bomb threat. Sgt. O'Connor did not fill out any UF-49's regarding this incident and he did not know of any being filled out.

Sgt. O'Connor was shown the § 87(2)(b) video. While watching it, he identified himself as the blue-shirted officer, standing next to Chief Monahan during Ins. Galati's speech. (This is at approximately 24:40 on the tape). Sgt. O'Connor identified Chief Monahan as the officer who said that anyone in the media who blocks traffic will be arrested. (This is at approximately 25:20 on the tape.) When the march starts on the video, Sgt. O'Connor was asked if the people walking on the Fulton street sidewalk were blocking pedestrian traffic and he said, "absolutely not, they are walking... At this point it looks like all the people are complying with the directives, with the exception of those who are stopped along the fence...At that point, the march is still continuing so everyone is complying with the march, looking further at it, it looks like the people on the fence are media" (Sgt. O'Connor is finishing this quote at the place on the tape when Chief Monahan starts yelling if you do not disperse you will be placed under arrest). (This segment runs from approximately 25:15 to 26:00.) When Chief Monahan starts yelling that everyone must disperse, the undersigned investigator asked Sgt. O'Connor where these people were supposed to disperse to given that an officer is seen earlier on the tape stating that any marcher who went in the street would be arrested. Sgt. O'Connor said, "it appears to me that they are being allowed to walk in the street." Sgt. O'Connor identifies Chief Monahan as being the officer who ordered the arrests. After Chief Monahan authorized their arrests.

Sgt. O'Connor was shown TARU tape 71. When he watched Chief Monahan shouting, "officers form a line, form a line, arrest teams behind, everyone here is under arrest," Sgt. O'Connor indicated that this was the first time he observed the marchers stop (This is at approximately 4:04 on the tape.) Sgt. O'Connor said that he did not know if it was Chief Monahan who caused the crowd to stop.

Sgt. O'Connor was shown the news video. The video shows a woman in a red shirt walking down the Fulton Street sidewalk with other people around her. (This is around 26 seconds on the tape.) When asked what this woman in the red shirt was doing to break the law, Sgt. O'Connor said, "at that point there, is she complying with the directives assigned to the protest, I don't know." Sgt. O'Connor then stated that he believed that the group as a whole was blocking the sidewalk. Sgt. O'Connor further stated that in his opinion pedestrian traffic is blocked at the point when the woman in the red shirt walks by. When asked if any of the people on the sidewalk were just pedestrians, who were not marching, he said that it is possible that some of them were just pedestrians.

**Captain William Tracey** was interviewed at the CCRB on February 4, 2005. Capt. Tracey was in charge of Mobile Field Force 37/87 and 38/88. Sometime in the afternoon on August 31, 2004, Lt. Harnan called Capt. Tracey and informed him that he was effecting arrests down at the WTC. This was the first time that Capt. Tracey had heard that there was a protest at the WTC. When Capt. Tracey arrived, he observed a large group of people on the sidewalk on Fulton Street. Police officers and an orange safety net surrounded the group. Capt. Tracey found Lt. Harnan on the half of Fulton Street closest to the WTC. Lt. Harnan informed Capt. Tracey that the group had been given several orders to disperse. When the group did not disperse, "a boss" at the scene, he did not know whom, gave an order to arrest everyone for disorderly conduct for blocking pedestrian traffic. Capt. Tracey spoke with an Inspector or a Deputy Inspector, he did not recall which one, who was at the corner of Church and Fulton Streets. The Inspector or Deputy Inspector told him to stay and make sure that the loading at the corner of Church and Fulton Streets was done properly. Capt. Tracey stated that he did not see anyone claiming to be tourists and asking to leave the area. Capt. Tracey left the scene once all of the prisoners had been removed.

Capt. Tracey was shown a clip from the § 87(2)(b) video. Capt. Tracey stated that he was not present when the announcements were made prior to the march. In addition, he was never told that this announcement

had been made. He stated that the officer holding the bullhorn was Inspector Jimmy Shea. Finally, he stated that he was not present when the group crossed the street to begin their march.

Capt. Tracey was also shown a clip from the news footage tape, which showed an officer making an announcement for people to be arrested. Capt. Tracey identified this officer as Chief Monahan.

**LT Harnan** was interviewed on October 29, 2004. LT Harnan was assigned to the Mobile Field Force for the RNC. He testified that, well before the RNC began, he was aware that Chief Monahan was the boss in charge of the RNC. On August 31, 2004 he received a radio call to respond to Fulton Street. When he arrived on the scene there were over a hundred people on the sidewalk between Church and Broadway on Fulton. LT Harnan was instructed to go to the northeast corner of Fulton and Church Streets. At the protest, there were two separate police teams; one assigned to Church Street and one assigned to Broadway. He was told by officers, whom he cannot identify, that Deputy Chief Monahan issued a warning to protestors to disperse, clear the sidewalks, or be arrested. He did not actually hear the announcement made because it was announced before he got there. Deputy Inspector Shea told LT Harnan to start making arrests. LT Harnan also spoke with Assistant Police Commissioner Messner about the arrest of legal observers. LT Harnan was told by Assistant Commissioner Messner that everyone on the sidewalk, including legal observers, would be arrested.

**Lt. Joseph Sitro** was interviewed on December 9, 2004. He was a Platoon Commander of the Mobile Field Force and was responsible for dealing with crowd control during this incident. On August 31, 2004, sometime after 12:30 p.m., possibly around 1:00 p.m., the field command post (he does not recall exactly who) advised LT Sitro that there was going to be a demonstration at the WTC and that the protestors would then march to the Madison Square Garden area. His group was assigned to follow the marchers at the end of the procession. His mobile field force was waiting a couple of blocks away when a call came over the radio stating that the march had started. His vans positioned themselves to follow the marchers at the end of the procession. When they pulled up the arrests were in progress. His Captain, CPT Griesman, reported to a supervisor when they got there, but he was not present for this meeting. Somebody, he does not know who, told him that the chief on the scene had ordered the arrest of all of these people. He does not know who the chief was and he stated that he does not know Chief Monahan.

His assignment at this incident was crowd control. The processing of arrests went on for about two hours. Somewhere in the middle of these arrests an officer, he does not know who because it was an officer not in his command, brought it to his attention that two of the men in the crowd were tourists and were just caught up in the protest. LT Sitro said that he observed § 87(2)(b) and § 87(2)(b) for approximately three minutes. During this time they were attempting to tell people that they did not belong there. LT Sitro further stated that he did not see either of them doing anything disorderly. LT Sitro spoke with § 87(2)(b) and § 87(2)(b) and they began to explain to LT Sitro what happened. LT Sitro told the officer to take them out of the mesh netting so that they could be questioned. Both men showed identification and verified that they were tourists by showing pictures on a digital camera that were time stamped. These pictures showed a number of tourist attractions that they had been to within the past few days. They told LT Sitro where they had been previously touring and they showed him Broadway tickets to a play they were going to see that night. LT Sitro stated, "they were obviously tourists that were caught up in this mass arrest situation." LT Sitro stated that their bags were not searched and that he escorted § 87(2)(b) and § 87(2)(b) out of the arrest area. Lt. Sitro directed PO Spitzfaden to write 250's for both § 87(2)(b) and § 87(2)(b). When questioned as to why the 250's stated that the felony they were suspected of was "inciting a riot" if the men were never disorderly LT Sitro said "they were caught up in a crowd and one of the charges that the crowd could have been charged with was inciting to riot... Inciting a riot was one of the charges that was brought to my attention at training." LT Sitro said it was his decision to have the 250's written, but he does not recall if he made the decision to write, "incite a riot." He said that he might have told PO Spitzfaden to put inciting a riot because the crowd, as a whole, not § 87(2)(b) and § 87(2)(b) specifically, could have been charged with trying to incite a riot. The behavior that he believed could have incited a riot was the people who were climbing on fences and making a lot of noise. When the arrests were finished, his team left.

**PO Thomas Spitzfaden** filled out UF-250's for § 87(2)(b) and § 87(2)(b) at the scene.

UF-250 for § 87(2)(b) (The following is based on the actual document-not PO Spitzfaden's interview.) § 87(2)(b) was stopped at 4:40 p.m. on August 31, 2004 at the intersection of Church and Fulton Streets. He was observed for 3 minutes prior to his stop because he was suspected of inciting a riot. He was stopped for 5 minutes. The UF 250 states "caught in a large crowd with mass arrest." The UF-250 further states that § 87(2)(b) was not summonsed or arrested. Finally it states that the force used was "by a mesh barricade." § 87(2)(b) was not frisked or searched and no weapons or contraband were found (Enclosure 22F).

UF-250 for § 87(2)(b) (The following is based on the actual document-not PO Spitzfaden's interview.)

§ 87(2)(b) was stopped at 4:40 p.m. on August 31, 2004 at Church street and Fulton Street. He was observed for 3 minutes prior to his stop because he was suspected of inciting a riot. He was stopped for 5 minutes and it states that § 87(2)(b) was "caught in large crowd with mass arrest." It further states that that § 87(2)(b) did not receive a summons or get arrested. Finally, it states that the force used was § 87(2)(b) "was surrounded by a mesh Barricade." § 87(2)(b) was not frisked or searched and no weapons or contraband were found (Enclosure 22D).

PO Spitzfaden was interviewed on November 10, 2005. During the RNC, PO Spitzfaden was assigned to the Mobile Field Force of the Staten Island Task Force with 6 or 7 other police officers from the Staten Island Task Force. He had been trained in disorderly task control before he was assigned to the RNC and he received further training with his task force specifically for the RNC. LT Sitro was in charge of his van, van 5458, and some of the other Staten Island Task Force mobile field vans. PO Spitzfaden was assigned to assist in arrest processing and to hold order, but he was not an arresting officer. PO Spitzfaden's van was called to the WTC sometime in the afternoon on August 31<sup>st</sup>. When he arrived, the people on the north east corner of Fulton and Church Streets, in front of the cemetery, were being blocked in by police officers with an orange mesh net. He was told that the people had been given an order to disperse and that they were told that if they did not disperse, they would be arrested. The people were spilling out onto the street and they were blocking the sidewalks and the street. Once the netting was put up, traffic could get through on Fulton, but traffic could not get through on Church. The majority of people inside the netting were chanting, but PO Spitzfaden could not recall what the chants were about. He was called to form a line in front of the net and to face in the opposite direction of the people being netted off. They were ordered to do this to protect the people being arrested and the arresting officers. This was a precautionary measure in case people from outside of the net started to form a disorderly group.

PO Spitzfaden had been standing in the line approximately 15 to 20 minutes when he was called over by LT Sitro. LT Sitro had stopped § 87(2)(b) and § 87(2)(b) and he told PO Spitzfaden to take down the names, addresses, and dates of birth of these two men. He also told PO Spitzfaden to prepare UF-250's for them. Because PO Spitzfaden had been facing away from the people being netted in, he had not observed § 87(2)(b) or § 87(2)(b) prior to this point. LT Sitro told PO Spitzfaden that he had spoken with § 87(2)(b) and § 87(2)(b) and that he believed that they had been caught up in the mix of the crowd and that they were just tourists. PO Spitzfaden does not know how LT Sitro determined that § 87(2)(b) and § 87(2)(b) were not part of the protest and he did not see LT Sitro taking any information from § 87(2)(b) or § 87(2)(b). LT Sitro told PO Spitzfaden to put down "possible inciting of a riot" for the reason of the stop. However LT Sitro did not tell PO Spitzfaden what the men had done that led him to believe that they may incite a riot. PO Spitzfaden does not recall why it was stated that the men had been observed for 3 minutes prior to the stop. Finally, PO Spitzfaden stated that he did not have any problems in obtaining the information because § 87(2)(b) and § 87(2)(b) were very friendly. PO Spitzfaden did not fill out any other UF-250's on this day and he did not know of any other people who were allowed to leave the mesh netting. PO Spitzfaden did not know who the officers were that were ultimately in charge at this incident.

**Lt. Chris Delsante** was interviewed at the CCRB on March 11, 2005. Throughout the RNC, Lt. Delsante was assigned to the Mobile Patrol. He was in charge of 4 Sergeants and 24 police officers. His job was to respond to calls about needed assistance during the RNC. On August 31, 2004 Lt. Delsante was at Canal Street and Center Street at around 1:00 p.m. when he received a call from Cpt. Shea to respond to Church

and Fulton Streets. Lt. Delsante did not recall if the call came on his cell phone or over the radio. Lt. Delsante did not know that there was going to be a march starting at the WTC and when Capt. Shea called him he did not inform Lt. Delsante why they needed to respond. Lt. Delsante stated that he was certain that it was Capt. Shea who called him to come down to the WTC because Capt. Shea was his commander throughout the entire RNC.

Lt. Delsante and all of his officers drove to the WTC. They arrived at approximately 1:20 p.m. Lt. Delsante met with Capt. Shea one block south of Fulton Street. He could see protestors gathering on the sidewalk next to the WTC. Capt. Shea told Lt. Delsante that there was going to be a march. Capt. Shea said, "they were going to let them march." Lt. Delsante's role was to "protect their right to march" by walking alongside of them and having the vehicles follow behind them. Lt. Delsante did not know if the group had a permit to march. After speaking with Cpt. Shea, Lt. Delsante and his officers stood with the crowd and waited for the march to begin. As they waited, they were standing on the sidewalk, which is to the west side of Church Street. Lt. Delsante did not hear any officers giving directives to the crowd and he did not hear an officer speaking through the bullhorn. When Lt. Delsante was shown the announcement made by Inspector Galati on the § 87(2)(b) video, Lt. Delsante stated that he did not recall hearing this announcement.

When the march began, Lt. Delsante was in the middle of the crowd. He did not know what instigated the crowd to start walking. Lt. Delsante crossed the street, walking from Church Street to Fulton Street, with the protestors. He stated, "the march didn't go very long. It crossed the street and that was the end of it." He said that the protestors marched approximately 20 feet. Lt. Delsante did not hear any directives given to the crowd as they crossed the street and he did not hear any orders for them to disperse<sup>1</sup>. When asked what caused the march to stop, Lt. Delsante said, "As soon as the march started and they crossed the street, the order was given to arrest everyone. Everyone was arrested.... They threw up nets and surrounded everyone." When questioned further he stated "some chief was giving orders to arrest everyone." Lt. Delsante heard and saw this chief giving the orders. Lt. Delsante did not know who the chief was. However, when he saw the news clips, he stated that the officer ordering everyone to be arrested was the same chief he heard give the orders. He did not learn who the commanding officer was, however, the only chief he saw on the scene was the chief that ordered the arrests (the chief shown on the video)."

**Sgt. Leslie Chan** was interviewed at the CCRB on February 22, 2005. Sgt. Chan was assigned to the Mobile Field Force for the RNC. Sgt. Chan's Memobook states "10:00 present for duty at 39 and 11 RNC; 15:45 10-84 (arrived at) Church and Fulton; 16:00 30 Under from location." Sometime in the afternoon on August 31, 2004, Lt. Delsante, her immediate supervisor, told her that they were going down to the WTC because there was a protest. This was the first time that she knew there was going to be a demonstration down at the WTC. She arrived at the WTC at 3:45 p.m. and she went immediately to the area where the awning is. Lt. Delsante told her that she and her officers were going to walk with the protestors. It was her understanding that she was going to walk with the protestors all the way up town. While she was waiting under the awning at the WTC an officer on a bullhorn made an announcement that all of the protestors needed to stay on the sidewalk. She did not see the officer who made the announcement; she just heard it over the megaphone. Sgt. Chan further stated that there were a lot of people and the situation was chaotic. This made it so that she could not discern all that was said in the announcement.

When asked if she started marching with the demonstrators, Sgt. Chan said, "No, what happened was the next thing I knew we were told as I was bringing my group to cross the street, the next thing I knew was someone went on the loudspeaker and said they are all under arrest." She said that the protestors were in the process of walking at that point and that there were people on the sidewalk and on the street. However, she did not see the officer who made the announcement. The officer who made the announcement told the officers to circle around the crowd. She stated that there was no discrimination in who was arrested; who ever was in the area of Fulton Street was surrounded. An orange net was set up around the people on Fulton Street.

**PO Jorge Caraballo** was interviewed on December 10, 2004. His memobook states, "13:40 a 10:85 at Nassau and Liberty." PO Caraballo stated that he did not think that the 10:85 was in regards to the RNC. He believed that it was an officer calling for paperwork. When asked about the sprint records, which

showed that at 16:49 sector one Adam called and said that everything was under control, PO Caraballo stated that sometime around 16:00 he got a call that said there was a large group of people protesting on Fulton and Church. He stated that he drove down Broadway and saw a group of people on Fulton. He further stated that there were a lot of officers already there. He said that he was not directed to go down to that sight, he just happened to be in the area. He never got out of his car, because it looked like the situation was in control.

**PO Jason Stewart** was interviewed at the CCRB on December 7, 2004. His memobook states: "Assignment RNC 36<sup>th</sup> and 11<sup>th</sup> Avenue 16:30 5 arrests at WTC demonstration- unauthorized march-disorderly conduct- blocking pedestrian traffic 1) § 87(2)(b) 2) § 87(2)(b) 3) § 87(2)(b) 4) § 87(2)(b) 5) § 87(2)(b) at 209 Broadway NY 10001." PO Jason Stewart filled out his memobook on August 31, 2004 as the day went along. PO Stewart's mobile field force group received a radio call about 10 minutes prior to the time he went to the WTC ordering his van to go to the WTC. PO Stewart arrived at the WTC with SGT Amatulle and eight other officers. When he got there, a crowd of people was gathering at the site, but the crowd had not started to march. He did not hear any officer speaking to the crowd when he got there. Soon thereafter, the crowd started marching. While the marchers were walking, PO Stewart heard a Chief, he could not identify who, instructing the crowd to stay to the left of the sidewalk to clear a path for pedestrians. The crowd did not comply. PO Stewart stated that this address was made after the crowd started marching, but before Chief Monahan ordered the arrests. He did not hear any other officers addressing the crowd, he did not hear any officer ask the crowd to disperse, and he did not hear any officer warn the crowd that if they did not disperse they would be arrested. PO Stewart also heard Chief Monahan order the arrests of the marchers. He stated that he heard Chief Monahan order officers to put up orange netting around the crowd. He also heard him order the arrest teams to effect the arrests. PO Stewart never heard any discussion about who would be arrested and to his knowledge no one was allowed to leave the mesh netting. He did not hear anyone asking to leave.

**Sgt. John White** was interviewed at the CCRB on November 18, 2004. Sgt. White arrived after the protestors were already in the mesh netting. Sgt. White did not have any new information to add.

**PO Brian Rickli** was assigned to the RNC Mobile Field Force Unit under the supervision of SGT John White. When he arrived, a large crowd was gathered around the WTC getting ready to march. Some of the marchers were holding signs, but no one was yelling or chanting. Before the crowd started marching Inspector Thomas Galati was on the corner of Church and Fulton Streets. Ins. Galati used a bullhorn to tell the crowd that if they marched they would be arrested. After Inspector Galati made this announcement Deputy Inspector Shea spoke through the bullhorn in the same spot. He again warned the crowd that if they marched up Fulton Street they would be arrested. The crowd disregarded the warnings and marched up Church Street and then turned right onto Fulton Street. When this occurred, Chief Monahan gave the order to block off Fulton Street from Church Street to half way up the block on Fulton. PO Rickli stated that the north side of Fulton was being blocked off, but that people could have left on the other side of the block. However, if people entered into the north side of Fulton Street, they were blocked off and were unable to leave. He further ordered people inside the mesh to be arrested. PO Rickli was assigned to arrest five people one of whom was § 87(2)(b). All five people were charged with disorderly conduct for obstructing the sidewalk and inciting to riot. PO Rickli stated that everyone who was inside the mesh with the exception of press and Lawyers Guild members was arrested without discrimination. If anyone asked to leave, Deputy Inspector Shea and Captain Tracey made the final decision.

**PO Michael Stoltzer** was interviewed at the CCRB on January 5, 2005. PO Stoltzer was part of a mobile unit that was called to the scene. PO Stoltzer did not have any new information to add.

**PO Josh Lewis** was interviewed on October 22, 2004. PO Lewis was § 87(2)(b)'s arresting officer. PO Lewis did not have any new information to add.

#### **Results of arrests**

§ 87(2)(b) accepted an Adjournment in Contemplation of Dismissal (ACD) on September 1, 2004 on the advice of his attorney because § 87(2)(b) lives out of state. The cases against § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were dismissed on October 6, 2004 along with all the other open cases stemming from arrests made at the WTC on DC Monahan's order.

## Documents

### News Paper and Internet articles

Reviews and commentary about this incident were published on various websites and in various newspapers. Because of the abundance of articles, they are not summarized individually. Some of the articles are contained in the case folder. (Enclosure 39A-39Z)

Permit: Lt. Sam Sentamore from the Central Appository confirmed that no one requested a permit for this event and no permit was given.

SPRINT: Job T08898

At 16:18 100 demonstrators walking from location up Broadway; group is orderly.

At 16:47 group orderly, authorization of Manhattan transit group on chambers

At 16:50 situation under control. (Enclosure 34A-34F)

Criminal Court Transcript: On October 6, 2004, Judge Freed dismissed all 227 arrests that were made at this incident for disorderly conduct. ADA William Beeschgave the following reasons for arguing for dismissal. (37A-37E)

§ 87(2)(b), § 87(2)(a) 160.50

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notice of Claim: The NYCLU filed a civil complaint on behalf of § 87(2)(b) § 87(2)(b) § 87(2)(b), and § 87(2)(b). The main points of their suit are as follows (enclosure 38A-38FF; the numbers indicated below are the actual numbers on the document):

- 1) Because the NYPD deployed mass-arrest tactics-such as mesh nets to trap groups of people on sidewalks-the department ended up arresting people who were engaged in lawful protest activity or who were not even demonstrators. (pg. 2) also (pg. 29)
- 2) As people gathered near Church and Fulton Streets, the police negotiated with demonstration organizers and agreed that the group could march as long as they remained on the sidewalk, obeyed traffic laws, and walked two-by-two. It was captured on video when NYPD officers made announcements that the event could proceed in this manner. (pg. 2)
- 3) When people crossed Church Street and proceeded east across Fulton Street, the sidewalk was not blocked and people were not given order to disperse (pg. 2) also see page (9)
- 4) Terence Monahan is an Assistant Chief assigned to the Bronx Borough Command of the NYPD. He ordered the unlawful mass arrest of demonstrators (pg. 7)
- 5) § 87(2)(b) is the organizer of the War Resisters League and he is the one who negotiated with the police department and he stated that the commanders assured him the march could proceed-east on Fulton and up Broadway to the Garden as long as participants walked two abreast, in order to keep sidewalks clear, and did not block traffic at intersections." (pg. 9)
- 6) When the police surrounded the sidewalk, people chanted, "Let us disperse!" but the police did not respond (26).
- 7) On October 6, 2004, the Manhattan DA announced that it would drop the charges of all the 227 prosecution. (pg. 5)

### **Conclusions and Recommendations**

#### **Factual Conclusions**

The following is taken as factual evidence either because no one disputed that it occurred or because it was clearly documented by videotape. The War Resistor's League planned a protest march that was going to begin at 4:00 p.m. at the WTC. The marchers were planning to march up Fulton Street, onto Broadway, and then north on Broadway to Madison Square Garden. Some of the marchers planned to do a "die-in" if they were stopped. The War Resistor's League never applied for a permit, and the march was an unpermitted event. DC Monahan was the commanding officer of the Mobile Field Forces and the Mobile Field Forces was in charge of unplanned protests. Because this was an unpermitted event, this incident constituted an unplanned protest. Thus, the commanding officer for this incident was DC Monahan.

On August 31, 2004, after receiving word of the unplanned protest, DC Monahan instructed Ins. Galati to go to the WTC to assess the situation. Ins. Galati went to the WTC Site between 2:00 and 3:00 p.m. When he arrived, Ins. Galati called DC Monahan to tell him that people were gathering. DC Monahan drove to the WTC, arriving at around 3:00 p.m. Prior to DC Monahan's arrival, Ins. Galati spoke with § 87(2)(b) the leader of the march. Ins. Galati informed § 87(2)(b) that the march was unpermitted and that if the marchers blocked traffic they would be subject to arrest. Ins. Galati also told § 87(2)(b) that the Fulton Street sidewalk was narrow and that if the banner that some of the protestors were carrying blocked the sidewalk, they would be subject to arrest. § 87(2)(b) told Ins. Galati that the marchers were going to walk without blocking traffic and that they were going to orient the banner so that it faced traffic and moved up the sidewalk with the marchers, proceeding in single file.

DC Monahan told Ins. Galati to make an announcement to the marchers informing them that the march was unpermitted and that if they broke any laws they would be subject to arrest. At 4:00 p.m. Ins. Galati stood on the sidewalk in front of the WTC and used a bullhorn to make the following announcement: "I am Inspector Galati from the New York City Police Department. I am informing and warning all marchers that this is a march without a permit. You must comply with all rules or else you will be subject to arrest. You have to walk either in single or double file so that you do not obstruct pedestrian traffic. If you obstruct pedestrian or vehicle traffic I have to inform you, you will be subject to arrest. You will also have to comply with the lights. You cannot cross against the lights. I ask for your cooperation so that everybody has a safe march."

During the announcements a civilian yelled, "We can't hear you." In response, Ins. Shea then gave a similar announcement, again through a bullhorn. Ins. Shea reiterates that the protestors do not have a permit and that if they break any laws of New York State they will be subject to arrest.

At 4:02 p.m. the marchers left the WTC and crossed over Church Street and onto the Fulton Street sidewalk. § 87(2)(b) and § 87(2)(b) were part of this group. The cemetery was on the protestors' left and officers with bicycles walked up Fulton Street (in the actual roadway), proceeding on the right side of the marchers. Some people spilled into the street and various officers told them to get back onto the sidewalk. At 4:04 p.m., the front of the march was about halfway up the Fulton Street sidewalk towards Broadway. Protestors covered the sidewalk back to the corner of Church and Fulton Streets. § 87(2)(b) and § 87(2)(b) were somewhere in the middle of the group of protestors on the Fulton Street sidewalk. More protestors were still in front of the WTC waiting to cross Church Street and join the march. At around 4:04 p.m. DC Monahan announced three times, without using a bullhorn, that "You are blocking the sidewalk if you do not disperse you will be placed under arrest." DC Monahan immediately went on to say, "Form a line. You are now blocking the sidewalk. Form a line, form a line right here. I need arrest teams behind, arrest teams behind, cordon it off down until the block. Everyone here is under arrest." Less than a minute passed between the time DC Monahan gave the original order to disperse and when he ordered the arrests. At 4:10 p.m., the orange net was put up around the people on the western half of the north Fulton Street sidewalk.

§ 87(2)(b) and § 87(2)(b) told Lt. Sitro that they were not protesting, but were just mixed up in the crowd. § 87(2)(b) and § 87(2)(b) showed Lt. Sitro Broadway tickets and digital photographs of other tourist attractions they had recently visited in New York. Lt. Sitro told PO Spitzfaden to take down their information, write 250's for them, and allow them to leave the area without being arrested or receiving a summons. § 87(2)(b) and § 87(2)(b) were released. Two-hundred and twenty-seven other people who were on the Fulton Street sidewalk were arrested for parading without a permit and disorderly conduct under New York City Administrative Code Section 10-110 and Penal Law Sections 240.20 (5) and (6).

**Allegation A: DC Terence Monahan authorized the stop and questioning of § 87(2)(b) and**

§ 87(2)(b)

The only issue in this case is whether DC Terence Monahan acted lawfully when he authorized the stop of

§ 87(2)(b) and § 87(2)(b) § 87(2)(g)

§ 87(2)(b) The Legal Guidelines for the Republican National Convention state that "generally, no permit is required for groups of demonstrators to walk or march along the sidewalk." However, it goes on to say, "If such conduct results in substantial disruption of pedestrians or vehicular traffic, members of the group could be arrested for disorderly conduct or simply ordered to disperse. Generally, however, it has been the Department's policy to accommodate these marches, whether planned or unplanned, in order to minimize disruption." (Enclosure 1F)

The march on August 31, 2004 was unpermitted. However, DC Monahan attempted to accommodate the marchers in accordance with the Department's policy. DC Monahan had officers escort the protestors and he had warnings given to the protestors that the walk would be possible if the marchers walked two abreast so as not to block pedestrian and vehicular traffic. DC Monahan also took measures to warn the protestors that the march was unpermitted and that they could be arrested if they blocked vehicular or pedestrian traffic.



Chief Estavillo gave DC Monahan the authority to use his (DC Monahan's) discretion as to how to best handle situations that evolved during the RNC. DC Monahan used his discretion to determine that the blockage of the Fulton Street sidewalk was causing a "substantial disruption" to pedestrian traffic and that the march as a whole was causing a dangerous situation. DC Monahan believed the march to be dangerous because officers had to walk against the traffic on Fulton Street in order to escort the marchers and because some marchers were spilling into Fulton Street. For these reasons, DC Monahan decided to stop the march when the front of the march was midway up the north Fulton Street sidewalk.

Soon thereafter, DC Monahan ordered all of the people on the lower half of the Fulton Street sidewalk to be arrested for disorderly conduct. Penal Law 240.20 05 states "a person is guilty of disorderly conduct when with intention to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he obstructs pedestrian or vehicular traffic." When DC Monahan ordered the arrests of all the individuals on the lower half of the Fulton Street sidewalk, he believed that he was ordering the arrests of those individuals who blocked the sidewalk while protesting. § 87(2)(g)

[REDACTED]

§ 87(2)(g) [REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: